



Land Lease

Council:

Mansfield Shire Council

Tenant:

**E.B. Mawson & Sons Proprietary Limited
ABN 14 004 519 617**

Guarantor:

The persons listed in Item 3 of the Schedule

Premises:

**Part Crown Allotments 83A1, 83A, 82AB2, and 82AB1, Monkey
Gully Road, Mansfield Victoria 3722**

Our Ref: AG868

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THIS Lease is made on the _____ day of _____ 2023

BETWEEN:

The entities described in Item 1 of the Schedule (Council)

The entity described in Item 2 of the Schedule (Tenant)

The persons (if any) described in Item 3 of the Schedule (Guarantor)

THE PARTIES AGREE:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

Act means the *Local Government Act 2020* (Vic) (as amended from time to time).

Authorisation means and includes any consent, authorisation, registration, permit, certificate, permission, licence, approval, direction or declaration issued by or required to be issued by any governmental, public, statutory or relevant authority.

Bank Guarantee means an unconditional, irrevocable bank guarantee with no expiry date and otherwise in a form and issued by a bank approved by the Council (in its absolute discretion) for the amount in Item 19.

Business Day means any day which is not a Saturday, Sunday or a day which is declared a public holiday in Victoria.

Claim includes a claim, demand, remedy, suit, injury, damage, Loss, Cost, liability, action, proceeding or right of action.

Commencement Date means the date referred to in Item 9 as the Commencement Date.

Condition Report means the report attached to this Lease as Annexure D.

Consumer Price Index means the index published by the Australian Government Statistician under the heading "All Groups" for Melbourne.

Contaminant means any toxic or hazardous substance, gas, liquid or material, any waste or discharge of any pollutant on, in or under the Premises which cause the Premises to be:

- (a) unsafe or unfit for habitation or occupation by persons or animals;
- (b) degraded in their capacity to support plant life; or
- (c) otherwise environmentally degraded.

Cost means any cost, charge, expense, outgoing, payment, fee, liability or penalty of any kind, including legal and professional fees.

Corporations Act means the *Corporations Act 2001* (Cth) (as amended from time to time).

Council means the entities named in Item 1 of the Schedule, or any other person who will be entitled to possession of the Premises when this Lease ends and includes the Council's officers, employees, servants, agents and contractors.

Council's Installations means all plant, equipment, fixtures, fittings, furnishings and other property of the Council which is installed by the Council during the Term.

CPI means the Consumer Price Index.

CPI Review Date means the date(s) (if any) specified in Item 17(b) of the Schedule.

Effective Control means in respect of an entity:

- (a) if the entity is a corporation, the ability to control the composition of the board of directors or having more than 50% of the shares giving the right to vote at general meetings; or
- (b) if the entity is the trustee of a unit trust, having more than 50% of the issued units in the unit trust.

Environmental Laws means all laws and regulations, environmental protection policies and directions, standards and guidelines of any governmental, public, statutory or relevant authority (and any other like bodies) regulating or otherwise relating to the environment, including, without limitation, any law relating to land use, planning, heritage, coastal protection, water catchments, pollution of air or waters, noise, soil or ground water contamination, chemicals, waste, use of hazardous or dangerous goods or substances, building regulations, public and occupational health and safety, or noxious trades and all licences, approvals, consents, permissions or permits issued by any governmental, public, statutory or relevant authority of an environmental nature.

Estimated Outgoings Proportion means the Council's estimate of the Tenant's Proportion of the Outgoings for each Financial Year of the Term, as notified by the Council to the Tenant at least one (1) month prior to the commencement of each Financial Year.

Expiry Date means the date referred to in Item 10 as the Expiry Date.

Financial Year means each period of 12 months commencing on 1 July in a year and ending on 30 June the following year (or other 12 month period nominated by the Council). Where applicable, it means the period commencing on the Commencement Date and ending on the following 30 June, and commencing on 1 July of the last year of this Lease and ending on the last day of this Lease.

Further Term means the further term (if any) described in Item 18.

GST means GST within the meaning of the GST Act.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended from time to time).

Guarantor means jointly and severally the person or persons named in Item 3 and any other person who agrees to guarantee the performance by the Tenant of its obligations under this Lease.

Insolvent means:

- (a) in relation to a corporation:
 - (i) an order is made or a resolution is passed to wind it up except for reconstruction or amalgamation; or
 - (ii) goes into liquidation; or
 - (iii) is placed under official management; or
 - (iv) has a receiver, including a provisional receiver, or receiver and manager of any of its assets or an administrator appointed; or
 - (v) an administrator has been appointed and thirty (30) days have passed since the date of appointment; or
 - (vi) has an inspector appointed under the Australian Securities and Investments Commission Act 2001 (Cth); or

- (b) in relation to a natural person:
 - (i) becomes bankrupt; or
 - (ii) takes or tries to take advantage of Part X of the *Bankruptcy Act* 1966 (Cth); or
 - (iii) makes an assignment for the benefit of its creditors; or
 - (iv) enters into a composition or arrangement with its creditors; or
 - (v) is unable to pay its debts when they fall due.

Item means an Item in the Schedule.

Land means the land described in Item 4.

Land Tax means an amount equal to the land tax which would be payable by the Council under section 81 of the *Land Tax Act 2005* if the Land was the only land owned by the Council.

Land Tax Proportion means 100% of the Land Tax.

Loss means and includes any damage, loss, costs, expense or liability incurred or sustained by a person (either directly or indirectly) however arising and whether present or future, fixed or unascertained, actual or contingent.

Maintenance Schedule means the schedule contained in Annexure C of this Lease which contains details of the Tenant's maintenance obligations under this Lease.

Market Rent Review Date means the date(s) (if any) specified in Item 17(a) of the Schedule.

Outgoings means the costs incurred by the Council in connection with the Premises including:

- (a) all rates, taxes (including Land Tax if the Retail Leases Act does not apply), charges and levies;
- (b) imposts, deductions, charges, withholdings and duties imposed by any governmental, public, statutory or relevant authority including any tax imposed as a consequence of the Council having an estate or interest in the Premises but excluding:
 - (i) any GST or like tax imposed because this Lease is a taxable supply; and
 - (ii) any income tax or capital gains tax;
- (c) insurance premiums for:
 - (i) public liability;
 - (ii) loss of rent and outgoings insurance for a period of twelve (12) months; and
 - (iii) such other risks which the Council considers appropriate;
- (d) waste removal and disposal costs;
- (e) costs of all services supplied to the Premises including, water, electricity, gas, telephone, communications services and any other services;
- (f) costs arising under or incurred in relation to Environmental Laws;
- (g) if the Retail Leases Act applies, other items specified in the Council's disclosure statement as Outgoings to which the Tenant must contribute,

but the Outgoings do not include:

- (h) interest and other charges incurred by the Council on amounts it has borrowed; and
- (i) any amount that the Council is prohibited from recovering under any relevant legislation from its tenants (including, if this is a retail premises lease, the Retail Leases Act).

Permitted Recipient means:

- (a) a financial or business advisor of the Tenant; or
- (b) the Tenant's employees and contractors,

from whom the Tenant has obtained a confidentiality undertaking which prevents the recipient disclosing any terms or provisions of this Lease to any other person or entity.

Permitted Use means the purpose stated in Item 16.

PPS Act means the *Personal Property Securities Act 2009* (Cth) (as amended from time to time).

PPS Register means the personal property securities register established under the PPS Act.

PPS Security Interest means a security interest to which the PPS Act applies.

Premises means the Land and the Tenant's Improvements.

Rent means the amount set out in Item 6, or as varied in accordance with this Lease.

Restriction means and includes any:

- (a) restriction or prohibition as to the use of the Premises imposed by or under any law, by-law or regulation;
- (b) registered covenant, easement, right, restriction or interest (whether legal or equitable); or
- (c) unregistered covenant, easement, right, restriction or interest (whether legal or equitable) of which the Council has given the Tenant written notice.

Retail Leases Act means the *Retail Leases Act 2003* (Vic).

Schedule means the schedule to the Lease.

Security means a Bank Guarantee, cash deposit, insurance bond, or similar unconditional, irrevocable form of security with no expiry date in a form issued or held by a bank or insurance company approved by the Council (in its absolute discretion) for the amount in Item 19.

Sign means a sign, placard, notice, poster, advertisement, flag, banner, signboard or like object.

Signage Plan means and includes all plans, drawings and other information concerning or relevant to any proposed Sign which the Tenant wishes to install on, in or near the Premises for the promotion of the Tenant's Business including:

- (a) the names of any person or entity who will install, maintain, operate and repair the Sign on behalf of the Tenant;
- (b) the method of illumination of the Sign (if any); and
- (c) any necessary works to any part of the Premises where the Tenant proposes to undertake to install, maintain, illuminate and operate the Sign.

Tenant means the person named in Item 2 of the Schedule, or any person to whom the Lease has been transferred or assigned.

Tenant's Agents means the Tenant's employees, agents, contractors, customers and visitors.

Tenant's Business means the Tenant's business conducted at the Premises.

Tenant's Improvements means any buildings, improvements, structures, fixtures or fittings which are made, constructed or erected on the Land by the Tenant with the Landlord's consent in accordance with the Lease.

Tenant's Property means the Tenant's property in the Premises other than the Tenant's Improvements.

Tenant's Proportion means the proportion set out in Item 12.

Term means the period stated in Item 8.

Valuer means:

- (a) in respect of premises which are 'retail premises' under the Retail Leases Act, a qualified specialist retail valuer with not less than 5 years' experience in valuing retail premises or as otherwise prescribed by the Retail Leases Act (if applicable); and
- (b) in respect of all other premises, either the Office of the Valuer General or a qualified valuer being a person who is a member of the Australian Property Institute with not less than 5 years' experience in valuing premises of a similar kind to the Premises.

1.2 Interpretation

- (a) References to laws include statutes, regulations, instruments and by-laws and all other subordinate legislation or orders made by any governmental, public, statutory or relevant authority with jurisdiction over the Tenant's Improvements, the Land or the Premises. **Illegal** means contrary to a law as defined in this sub-clause.
- (b) A reference to a person includes a reference to a body corporate, firm, partnership, association, governmental, public, statutory or relevant authority or other entity as constituted from time to time, and vice versa.
- (c) The law of Victoria applies to this Lease.
- (d) This Lease must be interpreted so that it complies with all laws applicable in Victoria, including the Retail Leases Act and the *Shop Trading Reform Act 1996 (Vic)*. If any provision of this Lease does not comply with any law, then the provision must be read down so as to give it as much effect as possible. If it is not possible to give the provision any effect at all, then it must be severed from the rest of this Lease.
- (e) Any change to this Lease must be in writing and signed by the parties.
- (f) An obligation imposed by this Lease on or in favour of more than one person binds or benefits all of them jointly and each of them individually.
- (g) The use of one gender includes the others and the singular includes the plural and vice versa.
- (h) If the Council, Tenant or Guarantor is an individual, this Lease binds that person's legal personal representative. If any of them is a corporation, this Lease binds its transferees.
- (i) Where this Lease requires the Tenant do or refrain from doing something, the Tenant is required to ensure that the Tenant's Agents do or refrain from doing the thing, as the case may be.
- (j) Anything to be done under this Lease on a Saturday, Sunday or a public holiday in Victoria and which cannot be done on that day may be done on the next day.

2. CONDITION PRECEDENT

2.1 Local Government Act

This Lease is entered into pursuant to Part 9 of the Act.

2.2 Condition Precedent

Unless section 191 applies:

- (a) this Lease is conditional upon the Council giving public notice of its intention to enter into a lease of the Land under section 190 of the Act, considering any submissions made under section 223 of the Act and resolving to grant a Lease after considering any submissions pursuant to section 223 of the Act.
- (b) The Tenant acknowledges that the Council will not make a decision whether or not to enter into a Lease of the Land before the expiry of four weeks from the date of

publication of a public notice of intention to do so pursuant to section 190 of the Act.

2.3 Commencement Date

Despite any other clause in this Lease to the contrary, if the Council resolves to grant this Lease pursuant to clause 2.2(a), then this Lease will commence on the later of:

- (a) the day following the date on which the Council notifies the Tenant of such resolution; and
- (b) the date specified in Item 9 of the Schedule.

3. GRANT OF LEASE

3.1 Grant

Subject to the condition precedent in clause 2.2(a) being satisfied, the Council leases the Premises to the Tenant for the Term commencing on the Commencement Date and ending at midnight on the Expiry Date on the terms and conditions of this Lease.

3.2 Further Term

- (a) The Council must renew this Lease for the Further Term stated in Item 18 if:
 - (i) there is no unremedied breach of this Lease by the Tenant of which the Council has given the Tenant written notice;
 - (ii) the Tenant has not persistently committed breaches of this Lease of which the Council has given notice during the Term; and
 - (iii) the Tenant has requested the renewal in writing not less than 6 months and not more than 12 months before the end of the Term.
- (b) The new lease for the Further Term:
 - (i) starts on the day after the Expiry Date;
 - (ii) has a starting Rent determined in accordance with clause 7, and
 - (iii) must contain the same terms as this Lease but:
 - (A) where there is more than one (1) Further Term set out in Item 18, the new lease must be completed by excluding from Item 18 the period covered by the new lease;
 - (B) where the last Further Term set out in Item 18 has been exercised, Item 18 of the new lease will be completed as "Nil"; and
 - (C) the Schedule must be amended or completed to show the correct commercial terms including dates, amounts and periods.
- (c) If the Tenant is a corporation and was required to provide directors' guarantees for this Lease, the Tenant must obtain guarantees of its obligations under the renewed Lease from its directors in the form of clause 29.

3.3 Holding over

If the Tenant remains in possession of the Premises without objection by the Council after the end of the Term or any Further Term (if applicable):

- (a) the Tenant, without any need for written notice of any kind, is a monthly tenant on the conditions in this Lease, modified so as to apply to a monthly tenancy;
- (b) either party may end the tenancy by giving one month's written notice to the other;
- (c) the monthly rent starts at one twelfth of the annual Rent which the Tenant was paying immediately before the Term or any Further Term (if applicable) ended unless a different rent has been agreed; and
- (d) the Council may increase the monthly rent by giving the Tenant one month's written

notice.

4. RENT

4.1 Rent

- (a) The Tenant must pay the Rent to the Council on the days and in the way stated in Item 11.
- (b) For any period of less than 1 calendar month, the Tenant must pay the Rent in the proportion which the number of days for which the Tenant is paying bears to the number of days in the relevant year of this Lease.
- (c) The Tenant must not make any deduction or claim any setoff against any amount payable to the Council under this Lease.

5. FIXED RENT INCREASES

Not used.

6. CONSUMER PRICE INDEX

- (a) From each CPI Review Date, the Rent shall be reviewed using the following formula:

$$\mathbf{AR} = \mathbf{R} \times \frac{\mathbf{CPIB}}{\mathbf{CPIA}}$$

Where:

AR means adjusted Rent,

R means Rent before adjustment,

CPIB means the Consumer Price Index figure for the quarter preceding the relevant CPI Review Date, and

CPIA means the Consumer Price Index figure for the quarter preceding the most recent previous CPI Review Date or where there is no previous CPI Review Date, the quarter preceding the start of the Term.

- (b) If the CPIB is not published until after the CPI Review Date, the adjustment is made when it is published but the adjustment takes effect from the relevant CPI Review Date. In the meantime, the Tenant must continue to pay the Rent at the old rate and, when the adjustment is made, the Tenant must immediately pay any shortfall.
- (c) If the base of the Consumer Price Index is changed between the two comparison dates an appropriate compensating adjustment must be made so that a common base is used.
- (d) Unless the Retail Leases Act applies and requires otherwise, if the Consumer Price Index is discontinued or suspended, then the calculation is to be made using whatever index is substituted for it. If no other index is substituted for it, the calculation is to be made using the index or calculation which the senior office-bearer of the Australian Property Institute — Victorian Division (acting as an expert and not as an arbitrator) decides is appropriate in the circumstances. This decision is binding.
- (e) An adjustment is not to be made to the Rent pursuant to this clause 6, if such adjustment would result in a decrease in the Rent payable.
- (f) Clause 6(e) does not apply if the Retail Leases Act applies.

7. RENT REVIEWS TO MARKET

7.1 Procedure for determining Rent

From each Market Rent Review Date, the Rent will be the current market rent of the Premises agreed or determined in accordance with the following procedure:

- (a) if a Market Rent Review Date is specified in Item 17(a), Council may (but if the Retail Leases Act applies must not earlier than 3 months before and not later than 3 months

- after the relevant Market Rent Review Date) notify the Tenant of the amount it considers to be the current market rent for the Premises at the relevant Market Rent Review Date (**Council's Notice**);
- (b) the Rent from and including the relevant Market Rent Review Date is the amount stated in the Council's Notice unless the Tenant gives the Council a notice, disagreeing with that amount within 30 days (time being of the essence) after the Council's notice is given (**Tenant's Notice**);
 - (c) if the Tenant gives a Tenant's Notice and the Council and Tenant cannot agree on the current market rent within 1 month after the date of the Tenant's Notice, the current market rent for the Premises at the relevant Market Rent Review Date is to be determined by a qualified Valuer taking into account:
 - (i) the provisions of this lease;
 - (ii) whether the Council is able to recover Land Tax or any other item of Outgoings from the Tenant due to any change in the law;
 - (d) the Valuer is to be appointed by agreement of the parties within 28 days of the date of the Tenant's Notice or failing agreement within that time by the Small Business Commissioner in respect of a lease to which the Retail Leases Act applies or by the President of the Australian Property Institute (Victorian Division) in respect of a lease to which the Retail Leases Act does not apply;
 - (e) regardless of any clause to the contrary in this lease, any delay by the Council in instituting a market review of the Rent or invoicing for the current market rent does not affect the Council's rights to invoice for the current market rent retrospectively and recover Rent increases;
 - (f) the Valuer must be instructed to:
 - (i) have regard to written submissions made by the Council and Tenant which are to be given within 28 days of the parties agreeing to or being notified of the Valuer's appointment (time being of the essence);
 - (ii) determine the current market rent as an expert and give a written determination and reasoning as soon as possible after receiving the parties written submissions under clause 7.1(f)(i); and
 - (iii) determine a market rent which is not less than the Rent payable immediately prior to the Market Rent Review Date, except this sub-clause will not apply where the Retail Leases Act applies;
 - (g) A Valuer must not take into account the following matters in determining the current market rent:
 - (i) the value of goodwill created by the Tenant's occupation; or
 - (ii) the value of the Tenant's Improvements on the Premises.
 - (h) A valuation under clause 7.1 must:
 - (i) be in writing;
 - (ii) contain detailed reasons for the determination;
 - (iii) specify the matters to which the Valuer had regard or had disregarded, their respective weighting and any other adjustments.
 - (i) if:
 - (i) no determination has been made within 45 days of the parties:
 - (A) appointing the Valuer; or
 - (B) being informed of the Valuer's appointment, or

- (C) the Valuer resigns, dies, or becomes unable to complete the valuation, then the parties may immediately appoint a replacement Valuer in accordance with clause 7.1(d);
- (j) the Valuer's determination will be final and binding on the parties. The Valuer acts as an expert, not as an arbitrator.
 - (k) the Valuer's fees must be borne equally by the Council and Tenant;
 - (l) any variation in the Rent, when agreed or decided, will take effect from the relevant Market Rent Review Date;
 - (m) if the Rent has not been determined by the relevant Market Rent Review Date, the Tenant must continue to pay Rent at the rate applicable prior to the relevant Market Rent Review Date until the new Rent has been determined or agreed;
 - (n) any adjustment required on determination of or agreement on the new Rent must be paid to the Council or credited to the account of the Tenant within 14 days of determination of or agreement on the Rent under this clause 7;
 - (o) an adjustment is not to be made to the Rent pursuant to this clause 7, if such adjustment would result in a decrease in the Rent payable;
 - (p) Clause 7.1(o) does not apply if the Retail Leases Act applies.

7.2 Council's Notice

- (a) If the Council does not serve a Council's Notice, the Tenant must continue paying the Rent payable immediately prior to the Market Rent Review Date.
- (b) Time shall not be of the essence in respect of the Council's Notice and any delay by the Council in giving the Council's Notice will not affect the Council's rights.

7.3 Retail Leases Act to Prevail

If the Retail Leases Act applies, to the extent that this clause 7 conflicts with the Retail Leases Act, the provisions of the Retail Leases Act prevail.

8. OUTGOINGS

The Tenant must:

- (a) pay to the Council the Tenant's Proportion of any Outgoings within 14 days of request by Council;
- (b) pay directly to the supplier or provider the Tenant's Proportion of any Outgoings for which the Tenant receives notices directly and produce receipts within 7 days of a request from the Council to do so; and
- (c) unless the Retail Leases Act prohibits the payment by the Tenant of any amount in respect of Land Tax, pay to the Council the Land Tax Proportion within 7 days of the Council's request.

9. SERVICES AND OTHER PAYMENTS

9.1 Services

- (a) The Tenant must pay when due all charges for the provision and usage of services to the Premises including gas, electricity, water and telephone where such services are separately metered or charged directly to the Tenant.
- (b) The Tenant must pay for the cost of the installation of meters to separately service the Premises if requested by the Council.

9.2 Other Charges

The Tenant must

- (a) pay when due the expenses of operating, maintaining and repairing any heating, cooling or air conditioning equipment exclusively serving the Premises; and
- (b) pay all insurance premiums due to special risks to the Premises as a result of the Tenant's use of the Premises.

9.3 Costs

- (a) The Tenant must pay on demand the Council's reasonable expenses of:
 - (i) the registration (if applicable) and stamping of this Lease;
 - (ii) the variation, renewal, assignment, surrender or ending of this Lease;
 - (iii) the subletting of the Premises or any part of the Premises at the Tenant's request;
 - (iv) the preparation of a lease plan or survey plan (if required);
 - (v) the Council's costs (including charges on a solicitor-own client basis) incurred as a result of a breach of this Lease by the Tenant; and
 - (vi) the Council's costs of considering the granting of any consent or approval under this Lease (whether or not the Council's consent is given, refused or the application for consent is withdrawn),but, if the Retail Leases Act applies, only to the extent to which the Retail Leases Act permits recovery.
- (b) Each party must pay its own costs in connection with the negotiation, preparation, settling and execution of this Lease.

9.4 Duty

The Tenant must pay any stamp duty on this Lease, on any renewal, and any additional stamp duty after a review of Rent (if applicable) (including penalties and fees).

9.5 Interest

The Tenant must pay on demand interest at the rate stated in Item 15 on any Rent, Outgoings or other money which the Tenant has not paid as required under the Lease within 7 days of the due date. Interest is to be calculated daily from the due date and continues until the overdue money and interest is paid in full.

9.6 GST

- (a) Expressions used in this clause 9.6 and in the GST Act have the same meanings as when used in the GST Act.
- (b) Amounts payable and consideration provided under or in respect of this Lease (other than under clause 9.6(c)) are GST exclusive.
- (c) The recipient of a taxable supply made under or in respect of this Lease must pay to the supplier, at the time the consideration for the supply is due, the GST payable in respect of the supply. This obligation extends to the supply consisting of a party's entry into this Lease.
- (d) An amount payable by the Tenant in respect of a creditable acquisition by the Council from a third party must not exceed the sum of the value of the Council's acquisition and the additional amount payable by the Tenant under clause 9.6(c) on account of the Council's GST liability.
- (e) A party is not obliged, under clause 9.6(c), to pay the GST on a taxable supply to it under this Lease, until given a valid tax invoice for the supply.

10. INSURANCE

10.1 Insurance Obligations

The Tenant must take out and keep current insurance cover throughout the Lease Term

and any Further Terms in relation to the Premises in the name of the Tenant and noting the interest of the Council for:

- (a) public risk for any single event for the amount stated in Item 14, or if none is stated, for \$20 million with an extension which includes the indemnities given by the Tenant to the Council in this Lease;
- (b) a policy covering the Tenants Improvements, fittings, accessories, equipment and stock in the Premises or associated with the Tenant's Business carried on at the Premises covering the Premises and all items installed in the Premises for their full replacement value against risks including damage and destruction, fire, water, storm and rainwater damage;
- (c) plate glass for its replacement value;
- (d) damage to Premises as a result of unlawful entry;
- (e) business interruption insurance for an amount a prudent business person operating the Tenant's Business would take out;
- (f) workers' compensation; and
- (g) any other insurance required by law or reasonably required by the Council.

10.2 Certificate of Currency

- (a) Prior to the Tenant accessing the Premises, the Tenant must provide the Council with a copy of the Tenant's certificate of currency of insurance which notes the Council as an interested party.
- (b) The Tenant must on or prior to the Commencement Date of this Lease produce satisfactory evidence of insurance cover, on each anniversary of the Commencement Date of this Lease and on written request by the Council.

10.3 Maintenance of Policy

- (a) The Tenant must maintain the insurance cover with an insurer approved by the Council (but the Council must not withhold approval unreasonably) and ensure that each insurance policy requires the insurer to give 21 days' written notice of cancellation to the Council before cancelling or refusing to renew the policy.
- (b) The Tenant must not do anything which might affect any insurance policy relating to the Premises by causing:
 - (i) it to become void or voidable;
 - (ii) any claim on it being rejected; or
 - (iii) a premium to be increased.

10.4 Extra Premiums

The Tenant must pay any extra premiums for any extra risk caused or contributed to the Premises as a result of the Tenant's use of the Premises, whether or not such use is within the Permitted Use and whether or not the Council has given its prior consent to such use.

10.5 Proceeds of Policy

The Tenant must apply the proceeds of any insurance policy in compensation and restitution in respect of any Loss, damage, injury or death to any person or property for which the Tenant is liable and if the insurance proceeds are insufficient for that purpose, the Tenant must pay any shortfall.

10.6 Non-vitiating of policies

The Tenant must not do anything in, to or on the Premises and must use its best endeavours not to allow anything to be done which may vitiate or render void or voidable any Tenant's insurances or any condition of any insurance taken out by the Landlord of which the Tenant has been made aware in respect of the Premises or any property in or on

it.

11. CONSTRUCTION OF TENANT'S IMPROVEMENTS

11.1 Tenant's Improvements

- (a) Notwithstanding anything in this Lease to the contrary, the Tenant may with the Council's consent, at any time after the Commencement Date, undertake the construction of the Tenant's Improvements on the Land.
- (b) Before commencing construction of the Tenant's Improvements, the Tenant must:
 - (i) obtain the written consent of the Council to the construction of the Tenant's Improvements (which consent will be in the Council's absolute discretion);
 - (ii) provide the Council with all detailed plans, drawings and other information concerning the construction of the Tenant's Improvements;
 - (iii) at its cost, obtain any necessary building, planning or other permit required in respect of the Tenant's Improvements and provide copies to the Council;
 - (iv) provide the Council with the names of any person or entity who will undertake the construction of the Tenant's Improvements on behalf of the Tenant;
 - (v) provide the Council with the Security if it has not already done so;
 - (vi) deliver the Lease documentation in a form which is acceptable to the Council and which is signed by the Tenant and any Guarantor and returned to the Council (if it has not already done so);
 - (vii) effect contractors all risk insurance for the full value of the Tenant's Improvements (in addition to the various insurances which it is required to effect under clause 10.1 of this Lease) and provide evidence to the Council that such insurance has been effected.

11.2 Construction of Tenant's Improvements

The Tenant must undertake or ensure that the construction of the Tenant's Improvements are undertaken:

- (a) in accordance with the information provided in clause 11.1(b)(ii), the permits obtained in accordance with clause 11.1(b)(iii) and using the persons referred to in clause 11.1(b)(iv); and
- (b) in a proper and workmanlike manner and to a proper and workmanlike standard and in compliance with all applicable industry standards (including any relevant and current standards published by Standards Australia).

11.3 Cost of Tenant's Improvements

The Tenant must:

- (a) pay all costs and expenses associated with the construction of the Tenant's Improvements;
- (b) pay the costs of the Council considering the Tenant's Improvements, including the fees of architects or other building consultants engaged by or on behalf of the Council regardless of whether or not the Council approves of the Tenant's Improvements; and
- (c) pay the costs of all inspections of the Tenant's Improvements from time to time by any consultants appointed by the Council for such purpose and to provide access to the Land to such consultants at any time upon reasonable notice during the construction of the Tenant's Works.

11.4 Make Good

The Tenant must immediately make good any damage to the Land caused by the construction of the Tenant's Improvements.

11.5 Indemnity

The Tenant indemnifies and agrees to keep indemnified the Council in respect of all costs, expenses, liabilities, actions or damages incurred by the Council in connection with:

- (a) the Tenant constructing the Tenant's Improvements including any claims made by owners or occupiers of any adjoining land as a result of the Tenant constructing the Tenant's Improvements; and
- (b) the Tenant failing to complete the Tenant's Improvements as required under this clause 11.

11.6 Ownership

Subject to the Council exercising its rights under clause 17.3 of this Lease, the Tenant owns the Tenant's Improvements constructed by the Tenant under this clause 11.

12. REPAIRS AND MAINTENANCE

12.1 General

- (a) Except for fair wear and tear, the Tenant must keep:
 - (i) the Land in the same condition as at the earlier of the Commencement Date of this Lease or the date that the Tenant takes possession of the Land;
 - (ii) otherwise maintain the Land and the Tenant's Improvements in accordance with the Maintenance Schedule contained in Annexure C of this Lease.
- (b) The Tenant must carry out maintenance or repairs within 7 days of being served with a written notice by the Council of any defect or lack of repair which the Tenant is obliged to make good under this Lease. If the Tenant does not comply with the notice, the Council may carry out the repairs and the Tenant must repay the cost to the Council on demand.

12.2 Cleaning and Rubbish Removal

The Tenant must keep the Premises properly cleaned and free from rubbish, keep waste in proper containers and have it removed regularly.

12.3 Adjacent Premises

The Tenant must immediately make good damage caused to any adjacent premises by the Tenant or the Tenant's Agents.

12.4 Compliance with Directions

In complying with its obligations under this clause 12, the Tenant must:

- (a) unless the Retail Leases Act applies, only use persons approved by the Council to repair and maintain the Premises and any of the Council's Installations;
- (b) comply with all directions of the Council as to the prevention, detection and control of fire; and
- (c) comply with all directions of the Council in relation to the cleanliness of the Premises, control of vermin, emergency drills and procedures and the use of elevators.

12.5 Notice to Council

The Tenant must immediately give written notice to the Council of:

- (a) damage to the Premises or of any defect in the structure of or any of the services to the Premises;

- (b) service by any governmental, public, statutory or relevant authority of a notice or order affecting the Premises;
- (c) any hazards threatening or affecting the Premises;
- (d) any hazards arising from the Premises for which the Council might be liable; or
- (e) any thing necessary to enable the Council to comply with its obligations under this Lease.

12.6 Council access

The Tenant must permit the Council, its agents or workmen to enter the Premises during normal business hours, after giving reasonable notice (except in cases of emergency when no notice will be required):

- (a) to inspect the Premises;
- (b) to carry out repairs;
- (c) to do anything necessary to comply with notices or orders of any governmental, public, statutory or relevant authority;
- (d) to bring any necessary materials and equipment on to the Premises; or
- (e) to do anything necessary to enable the Council to comply with its obligations under this Lease.

13. PLANT AND EQUIPMENT EXCLUSIVELY FOR PREMISES

13.1 Tenant's Obligations

If any plant or equipment exclusively serves the Premises, the Tenant must (irrespective of whether or not it owns the plant and equipment):

- (a) comply with the Council's directions in respect of the operation, maintenance, repair, service and testing of the plant and equipment; and
- (b) if required by the Council, enter into service and maintenance contracts to ensure regular service and maintenance of the plant and equipment and provide evidence to the Council on request that it has entered into such contracts.

13.2 Malfunction of Council's Installations

The Tenant must not, and must not let anyone else withhold payment of Rent or any other amount payable by the Tenant under this Lease or make any claim against the Council in connection with the malfunction of any of the Council's Installations or with any interruption to the provision of any services in or to the whole or part of the Premises.

14. CONDUCT OF THE TENANT'S BUSINESS

14.1 Permitted Use

The Tenant must only use:

- (a) the Premises for the Permitted Use and must not use the Premises for any other purpose;

14.2 Authorisations

The Tenant must obtain and keep current at the Tenant's cost all Authorisations necessary for the proper conduct of the Tenant's Business at the Premises and comply with all Authorisations obtained.

14.3 Compliance with Rules and Council's Requirements

The Tenant must comply with:

- (a) any directions, resolutions and notices issued or passed by or on behalf of the Council; and

- (b) the Council's requirements (if any) in respect of occupational health and safety.

14.4 Delivery of Goods

The Tenant must only permit the delivery of goods to the Premises in accordance with any reasonable directions given by the Council.

14.5 Appearance of Premises

The Tenant must:

- (a) make the Premises presentable for the conduct of the Tenant's Business;
- (b) ensure that the Premises are kept in a neat and tidy condition at all times; and
- (c) ensure that all plant, equipment, fixtures, fittings and accessories are kept clean and tidy and presentable to the public.

14.6 Behaviour and Nuisance

The Tenant must not:

- (a) use the Premises for any illegal purpose or allow any unlawful or immoral or offensive behaviour on the Premises;
- (b) do anything which might cause nuisance, damage or disturbance to a tenant, occupier or owner of any adjacent property or premises;
- (c) conduct a public auction on the Premises;
- (d) without the prior written consent of the Council, allow any radio, sound systems, television or other like media or equipment to be seen, heard, viewed or received from outside the Premises;
- (e) cover or obstruct or block:
 - (i) any drain in the Premises;
 - (ii) any entrance or exit to the Premises; or
 - (iii) any fire safety equipment or service in the Premises and must take all precautions required by law against fire;
- (f) create fire hazards or keep or use chemicals, inflammable fluids, acids, or other hazardous things on the Premises except for the Permitted Use, or create fire hazards;
- (g) misuse, overload or interfere with any services to the Premises, without limitation, electricity, gas and water;
- (h) bring onto the Premises any object which by its nature or weight might cause damage to the Premises, without the Council's written consent; or
- (i) except in an emergency, interfere with any of the services or equipment in the Premises or in any property of which the Premises form part.

14.7 Secure Premises

The Tenant must take reasonable precautions to secure the Premises and comply with the Council's directions.

14.8 Tenant's Business

The Tenant must:

- (a) ensure that persons who will be engaged in the conduct of the Tenant's Business have relevant experience or will be properly supervised;
- (b) ensure that the Tenant's Business is conducted in a good and proper manner and in accordance with all laws and requirements of all governmental, public, statutory or relevant authority relevant to the Premises, the Tenant's Business and the Permitted

Use;

- (c) conduct the Tenant's Business in a manner so as to afford no reasonable ground for terminating or suspending any Authorisation granted in respect of the Tenant's Business; and
- (d) comply with all laws relating to the Tenant's use or occupation of the Premises.

15. TENANT'S ACKNOWLEDGEMENTS

15.1 No Council Representation or Warranty

- (a) The Tenant has entered into this Lease with full knowledge of and subject to any prohibitions or restrictions contained in any law or any requirement on how the Land or the Premises may be used.
- (b) The Tenant acknowledges and agrees that the Council has not made any representation, warranty, promise or undertaking (express or implied):
 - (i) that the Land or the Premises are fit for the Permitted Use;
 - (ii) that the Premises may be used for the Permitted Use;
 - (iii) about the leasing or use of the Premises.

15.2 Authorisations

The Tenant is responsible for obtaining and maintaining at its cost any Authorisation required for the Premises to be used for the Permitted Use.

16. MANAGEMENT OF PREMISES

16.1 Council not liable for Interruption

To the extent permitted by law, the Council is not liable to the Tenant for any Loss or damage caused to the Tenant in connection with the malfunction of any of the Council's Installations or with any interruption to the provision of any services in or to the whole or part of the Premises and the Tenant is not entitled to withhold payment of any money payable to the Council under this Lease in connection with any such malfunction or failure.

17. TENANT'S OBLIGATIONS AT END OF LEASE

17.1 Tenant's Obligations

On the expiry or earlier termination of this Lease, the Tenant must:

- (a) Unless clause 17.3 applies, remove the Tenant's Improvements and make good any damage caused to the Land by such removal;
- (b) remove from the Premises the Tenant's Property and any other property owned by the Tenant in the Premises and make good any damage caused to the Premises in removing such property;
- (c) remove any Sign installed by the Tenant pursuant to clause 18 and make good any damage caused by the removal of the Sign and return the area where the Sign was located to the condition as it was prior to the installation of the Sign.

17.2 Tenant's Failure to Comply

If the Tenant does not comply with its obligations under clause 17.1, the Council may:

- (a) undertake any works required to remove the Tenant's Improvements and reinstate and make good the Land and may recover the costs it incurs in doing so from the Tenant as a debt due; or
- (b) treat the Tenant's Property and any Sign as abandoned and deal with them in any way it sees fit at the Tenant's expense (including removing the Tenant's Property, and any Sign and storing them in a public warehouse and disposing of them). If the Council sells all or any part of the Tenant's Property, or any Sign, the Council need not account to the Tenant in respect of any proceeds of sale;

- (c) recover Rent and Outgoings from the Tenant until such time as the Tenant's Improvements have been removed from the Land to the Council's satisfaction and the Tenant agrees that it must pay such Rent and Outgoings to the Council on demand.

17.3 Ownership of Tenant's Improvements

- (a) The Tenant acknowledges and agrees that the Council may, at the end of Lease, elect (in its sole discretion) by notice in writing to the Tenant, for ownership of the Tenant's Improvements to vest in the Council unencumbered (**Council's Election**).
- (b) If the Council makes the Council's Election, the Tenant must yield up the Tenant's Improvements (including items of a structural or capital nature) in good and substantial repair and condition and otherwise in the condition described in the Condition Report.
- (c) The Tenant must do all things necessary to transfer ownership of the unencumbered Tenant's Improvements to the Council (including, without limitation, signing any documents to effect the transfer of ownership of the Tenant's Improvements).

18. TENANT'S SIGN

18.1 Council's Consent

- (a) The Tenant must not install any Sign in or about the Premises except in accordance with this clause 18.
- (b) The Tenant must apply to the Council for its consent to the installation of any Sign in or to the Premises (at the Tenant's cost) by delivering the Signage Plan to the Council.
- (c) The Council will not unreasonably withhold its consent to the installation of the Sign by the Tenant if:
 - (i) the Sign is not offensive or contrary to any law or Council policy; and
 - (ii) the Tenant has first obtained all necessary Authorisations in relation to the Sign at the Tenant's cost.

18.2 Signage Obligations

If the Council consents to the installation of the Sign, the Tenant must, at its cost:

- (a) comply at all times with the conditions of any Authorisation obtained relating to the Sign;
- (b) comply with any notice issued by any governmental, public, statutory or relevant authority in relation to the Sign;
- (c) comply at all times with the Council's directions in relation to the Sign;
- (d) make good any damage to the Premises caused by the installation, maintenance and repair of the Sign; and
- (e) keep the Sign in good repair and condition and all installations or equipment required for the illumination of the Sign (if any) in proper working order.

18.3 Signage Prohibitions

Notwithstanding anything else contained in this Lease and this clause 18, the Tenant must not use or display:

- (a) a Sign which is offensive or contrary to any law or Council policy at any time; or
- (b) any handwritten signs, advertisements or ticketing inside or outside the Premises;

19. RELEASE AND INDEMNITY

19.1 Release

The Tenant uses and occupies the Premises at its own risk and releases the Council from

all actions and claims resulting from any Loss, damage, injury or death occurring in connection with the Premises, except to the extent caused by the Council's negligence.

19.2 Indemnity

The Tenant is liable for and indemnifies the Council against all claims resulting from:

- (a) any Loss, damage, injury or death in connection with the Premises; and
- (b) the use and occupation of the Premises by the Tenant,

except to the extent that such claims arise out of the Council's negligence.

20. COUNCIL'S RIGHTS AND OBLIGATIONS

20.1 Quiet Enjoyment

The Council must give the Tenant quiet possession of the Premises without any interruption by the Council as long as the Tenant complies with its obligations under this Lease, subject to the Council's rights which are reserved under this Lease.

20.2 Outgoings

The Council must pay the Outgoings which are not payable by the Tenant.

20.3 Showing of Premises

The Tenant must permit the Council (or its agent) access to the Premises at reasonable times by appointment to:

- (a) show the Premises to prospective purchasers at any time during the Term or any Further Term (if applicable);
- (b) show the Premises to prospective tenants within 12 months before the end of the Term or any Further Term (if applicable); and
- (c) affix "for sale" or "to let" signs in a way that does not unreasonably interfere with the Tenant's Business.

21. TENANT'S WORKS

21.1 Tenant to Obtain Consent

The Tenant may not alter or carry out works to the Premises without the Council's prior written consent.

21.2 Tenant's Obligations

If the Tenant desires to carry out any works in or to the Premises other than the works contemplated in clause 11 (**Tenant's Works**) then before commencing the Tenant's Works, the Tenant must at its cost:

- (a) provide the Council with all detailed plans, drawings and other information concerning the Tenant's Works;
- (b) at its cost, obtain any necessary building, planning or other permit required in respect of the Tenant's Works and provide copies of the permit to the Council;
- (c) provide the Council with the names of any person or entity who will undertake the Tenant's Works on behalf of the Tenant;
- (d) provide the Council with the Security if it has not already done so;
- (e) obtain the written consent of the Council to the carrying out of the Tenant's Works (which consent will be in the Council's absolute discretion); and
- (f) effect contractors all risk insurance for the full value of the Tenant's Works (in addition to the various insurances which it is required to effect under clause 10.1 of this Lease) and provide evidence to the Council that such insurance has been effected.

21.3 Alterations to Premises - Conduct of Tenant's Works

- (a) The Tenant must undertake or ensure that the Tenant's Works are undertaken:

- (i) in accordance with the information provided in clause 21.2(a), the permits obtained in accordance with clause 21.2(b) and using the persons referred to in clause 21.2(c); and
 - (ii) in a proper and workmanlike manner and to a proper and workmanlike standard and in compliance with all applicable industry standards (including any relevant and current standards published by Standards Australia).
- (b) On completion of the Tenant's Works the Tenant must immediately obtain and produce to the Council, any unconditional certificates of compliance or of satisfactory completion issued by relevant authorities.

21.4 Cost of Tenant's Works

The Tenant must pay:

- (a) all costs and expenses associated with its carrying out of the Tenant's Works;
- (b) the costs of the Council considering the Tenant's Works, including the fees of architects or other building consultants engaged by or on behalf of the Council regardless of whether the Council approves the Tenant's Works; and
- (c) the costs of all inspections of the Tenant's Works from time to time by any consultants appointed by the Council for such purpose and to provide access to the Premises to such consultants at any time upon reasonable notice during the carrying out of the Tenant's Works.

21.5 Make Good

The Tenant must immediately make good any damage to the Land caused by the carrying out of the Tenant's Works.

21.6 Indemnity

The Tenant indemnifies and agrees to keep indemnified the Council in respect of all costs, expenses, liabilities, actions or damages incurred by the Council in connection with:

- (a) the Tenant carrying out the Tenant's Works including any claims made by owners or occupiers of any adjoining land as a result of the Tenant carrying out the Tenant's Works; and
- (b) the Tenant failing to complete the Tenant's Works as required under this clause 21.

22. ASSIGNMENT AND SUBLETTING

22.1 No parting with Possession

The Tenant must not assign this Lease or sublet or otherwise part with possession of the Premises (or part thereof) or mortgage or charge the Tenant's estate or interest in the Premises without the Council's prior written consent.

22.2 Consent to Assignment

- (a) The Council will not unreasonably withhold consent to an assignment of this Lease if the Tenant:
 - (i) is not in default under this Lease;
 - (ii) asks the Council in writing to consent to the assignment;
 - (iii) gives the Council:
 - (A) in relation to the proposed assignee such information as the Council reasonably requires about its financial resources and business experience to demonstrate to the Council that the proposed assignee:
 - (I) is respectable, responsible and solvent;
 - (II) is of financial standing at least equal to the Tenant;

- (III) has sufficient business experience to meet the obligations of the Tenant under this Lease; and
 - (IV) is capable of paying the Rent and other amounts payable by the Tenant under this Lease; and
 - (B) a copy of the proposed assignment document; and
 - (C) if the Retail Leases Act applies, evidence that the Tenant has provided the proposed assignee with its business records in accordance with section 60(1)(d) of the Retail Leases Act and a disclosure statement in accordance with section 61(3) of the Retail Leases Act.
- (b) The Council may in its reasonable discretion require as a condition of its consent to an assignment of this Lease:
- (i) a guarantee from a third party that the Council deems appropriate in favour of and in a form approved by the Council be provided; and
 - (ii) that the amount of the Security referred to in Item 19 be reasonably increased if the assignee is of significantly lower financial standing than the Tenant.
- (c) If the Council consents to the assignment, the Council, Tenant, Guarantor (if any), assignee and assignee's guarantor (if any) must execute the assignment document in the form approved by the Council.
- (d) The Tenant must pay the Council's reasonable legal and other expenses incurred in connection with a request for consent, the granting or refusal of consent, the negotiation, preparation and completion of any documents and any stamp duty in relation to the proposed assignment (irrespective of whether consent is granted).
- (e) For the purposes of this clause 22, assign includes:
- (i) any change (other than in ownership of shares listed on the main board of any Australian Stock Exchange) altering the Effective Control of the Tenant or the ultimate holding company of the Tenant; or
 - (ii) any change altering the Effective Control of or the ultimate beneficial entitlement pursuant to any trust of which the Tenant is a trustee; or
 - (iii) the Tenant declaring itself trustee of the Premises.

22.3 No Assignment if Retail Leases Act to apply

Despite anything to the contrary contained in this Lease, if the Retail Leases Act does not apply to this Lease and an assignment of this Lease would result in the Retail Leases Act applying, the Council may refuse consent to the assignment in its absolute discretion.

22.4 Property Law Act

Section 144 of the *Property Law Act 1958* (Vic) does not apply to this Lease.

23. EVENTS OF DEFAULT AND COUNCIL'S RIGHTS

23.1 Time of Essence

(Except for clause 7.2(b)), time is of the essence in this Lease.

23.2 Events of Default

The Council may re-enter the Premises and end this Lease if:

- (a) the Rent (or part thereof) is in arrears for 14 days (whether or not the Council has demanded payment);
- (b) the Tenant does not comply with its obligations under this Lease and does not remedy the breach within 14 days of receiving a written notice from the Council;
- (c) the Tenant or a Guarantor is Insolvent;

- (d) there is a change in Effective Control of the Tenant without the Council's prior written consent; or
- (e) the Tenant, without the Council's written consent:
 - (i) discontinues the Tenant's Business on the Premises; or
 - (ii) leaves the Premises unoccupied for more than 30 consecutive days.

23.3 Re-entry by Council

Re-entry by the Council ends this Lease, but the Council retains the right to sue the Tenant for unpaid money or for damages for breaches of its obligations under this Lease.

23.4 Notice Requirements

- (a) For the purpose of section 146(1) of the *Property Law Act* 1958 (Vic) (as amended), 14 days is fixed as the period within which the Tenant must remedy a breach capable of remedy and make reasonable compensation in money.
- (b) Before terminating the Lease for repudiation, a party must give to the other written notice of the breach and a period of 14 days in which to remedy it.

23.5 Essential Terms

Breach by the Tenant of any of the following clauses of this Lease is a breach of an essential term and constitutes repudiation: 4.1(a), 6, 7, 8, 9, 10.1, 11, 12.1, 14.1, 17.1, 21, and 22.

23.6 Non-waiver of Rights

Even though the Council does not exercise its rights under this Lease on one occasion, it may do so on any later occasion.

23.7 Power of Attorney

- (a) The Tenant irrevocably nominates and appoints the Council and its officers severally to be the true and lawful attorney of the Tenant at any time after the power to re-enter has been exercised by the Council (sufficient proof of which will be a statutory declaration of the Council or its officers) to:
 - (i) execute and sign a transfer or a surrender of this Lease;
 - (ii) to procure the same to be registered (if required) and for this purpose to use the name of the Tenant; and
 - (iii) to do anything else and sign any other document on behalf of the Tenant relating to this Lease.
- (b) The power of attorney granted by the Tenant pursuant to clause 23.7(a) is granted for valuable consideration to secure the performance of the Tenant's obligations under this Lease.

24. ABANDONMENT OF THE PREMISES

24.1 Abandonment

If the Tenant vacates the Premises during the Term or any Further Term (if applicable), whether or not it ceases to pay Rent the Council may:

- (a) accept the keys;
- (b) enter the Premises to inspect, maintain or repair them; and/or
- (c) show the Premises to prospective tenants or purchasers,

without this being re-entry or waiver of the Council's rights to recover Rent or other money under this Lease.

24.2 Continuation of Lease

If the Tenant vacates the Premises during the Term or any Further Term, (whether or not it

ceases to pay Rent) this Lease continues until a new tenant takes possession of the Premises, unless the Council:

- (a) accepts a surrender of this Lease; or
- (b) notifies the Tenant in writing that the Council accepts the Tenant's repudiation of this Lease; or
- (c) ends this Lease by re-entry.

25. SECURITY

25.1 Delivery of Security

The Tenant must deliver the Security to the Council in the amount stated in Item 19 on or before the Commencement Date.

25.2 Council's Right to Call On Security

The Council may call upon the Security without notice to the Tenant to make good the cost of any breach by the Tenant of its obligations under this Lease.

25.3 Replacement or Top Up Security

- (a) If the Council exercises its rights under clause 25.2, the Tenant must immediately deliver to the Council a new Security in the amount stated in Item 19.
- (b) If the Rent increases on the commencement of the Further Term in accordance with this Lease, the amount secured by the Security will increase at the same time and in the same manner as the Rent and the Tenant must deliver a new Security to the Council for the increased amount and the Council must return the old Security to the Tenant. If the Rent decreases at any time during the Term in accordance with this Lease, the amount secured by the Security will not alter.
- (c) If the Council deals with the Premises in any way which results in a variation to the description of the Council (including a new entity becoming the Council), the Council may deliver a notice to the Tenant requiring it to provide a replacement Security that contains the new description and the Tenant must, at its cost, provide the replacement Security within 14 days of the date of the Council's notice.

25.4 Return of Security

The Council must return or release the Security to the Tenant within 3 months of the Expiry Date provided that the Tenant has vacated the Premises and performed all of its obligations under this Lease to the Council's satisfaction.

26. DESTRUCTION OR DAMAGE

26.1 Whole or Substantial Destruction

- (a) If the Premises are wholly or substantially destroyed then the Tenant must:
 - (i) at its costs expeditiously reinstate the Premises; and
 - (ii) continue to pay the Rent and Outgoings even if the Premises are wholly destroyed.
- (b) If the Tenant has not commenced reinstatement of the Premises within 6 months of the date of destruction, then the Council may elect to terminate this Lease without compensation to the Tenant.

26.2 Retail Leases Act to Prevail

If the Retail Leases Act applies, to the extent that this clause 26 conflicts with the Retail Leases Act, the provisions of the Retail Leases Act prevail.

27. COMPULSORY ACQUISITION

If the whole or a substantial part of the Premises, is compulsorily acquired by any governmental, public, statutory or relevant authority, this Lease will be terminated as from

the date such compulsory acquisition takes effect without prejudice to the liability of the Tenant for all Rent payable up to the date of termination and for any antecedent breach of this Lease up to the date of termination and the Council is not liable to the Tenant for any compensation whatsoever.

28. NOTICES

- (a) A notice given under this Lease may be given:
- (i) by post;
 - (ii) by facsimile; or
 - (iii) by registered post,
- to:
- (iv) the party's last known address, or
 - (v) registered office; or
 - (vi) if to the Tenant, at the Premises.
- (b) Posted notices will be taken to have been received 72 hours after posting unless proved otherwise.
- (c) Notices delivered or sent by facsimile after 5.00 p.m. will be taken to have been received at 9.00 a.m. on the next Business Day at the place where it is received.

29. GUARANTEE

29.1 Guarantee

The Guarantor in consideration of the Council having entered into this Lease at the Guarantor's request:

- (a) guarantees that the Tenant will perform all its obligations under this Lease for the Term and any renewed term or terms and during any period of overholding after the end of the Term;
- (b) must pay on demand any amount which the Council is entitled to recover from the Tenant under this Lease; and
- (c) indemnifies the Council against all loss resulting from the Council having entered into this Lease whether from the Tenant's failure to perform its obligations under it or from this Lease being or becoming unenforceable against the Tenant.

29.2 Guarantor's Liability

The liability of the Guarantor will not be affected by:

- (a) the Council granting the Tenant or a Guarantor time or any other indulgence, or agreeing not to sue the Tenant or another Guarantor;
- (b) failure by any Guarantor to sign this Lease;
- (c) assignment (except in accordance with the Retail Leases Act, if the Retail Leases Act applies) or variation of this Lease, but if this Lease is assigned the Guarantor's obligations, other than those which have already arisen, end when the Term or the Further Term (if applicable) ends and do not continue into a term renewed by a new tenant nor a period of overholding; or
- (d) the fact that this Lease cannot be registered at Land Use Victoria.

29.3 Separate Indemnity

If any of the Tenant's obligations are unenforceable against the Tenant, then this clause 29 is to operate as a separate indemnity and the Guarantor indemnifies the Council against all loss resulting from the Council's inability to enforce performance of those obligations. The Guarantor must pay the Council the amount of the loss resulting from the unenforceability.

29.4 Joint and Several Liability

If there is more than one Guarantor, this guarantee binds them jointly and severally.

30. DISPUTE RESOLUTION

30.1 Application of Clause

Unless the Retail Leases Act applies, if the words "The mediation procedure applies to this Lease" are included in Item 20, the mediation procedure applies to this Lease. In that event the parties must attempt to resolve any dispute by the mediation procedure, except disputes about:

- (a) unpaid Rent and interest charged on it;
- (b) review of Rent; or
- (c) a dispute to be resolved in another way prescribed by any other provision of this Lease.

30.2 Mediation Procedure

- (a) The mediation procedure is:
 - (i) a party may start mediation by serving a mediation notice on the other party;
 - (ii) the notice must state that a dispute has arisen and identify what the dispute is;
 - (iii) the parties must jointly request appointment of a mediator. If the parties fail to agree on the appointment within 7 days of service of the mediation notice, either party may apply to the President of the Law Institute of Victoria or the nominee of the President to appoint a mediator;
 - (iv) once the mediator has accepted the appointment the parties must comply with the mediator's instructions; and
 - (v) if the dispute is not resolved within 30 days of the appointment of the mediator, or any other period agreed by the parties in writing, the mediation ceases.
- (b) The mediator may fix the charges for the mediation which must be paid equally by the parties.
- (c) If the dispute is settled, all parties must sign the terms of agreement and these terms are binding on the parties.
- (d) The mediation is confidential and:
 - (i) statements made by the mediator or the parties; and
 - (ii) discussions between the participants to the mediation, before after or during the mediation,cannot be used in any legal proceedings.
- (e) It must be a term of the engagement of the mediator that the parties release the mediator from any court proceedings relating to the Lease or the mediation.
- (f) The mediator is not bound by the rules of natural justice and may discuss the dispute with a party in the absence of any other party.
- (g) If the Retail Leases Act applies, so that a dispute must be referred to the Victorian Civil and Administrative Tribunal, the parties agree that each may be represented by a legal practitioner or legal practitioners of its choice.

31. SALE OF COUNCIL'S INTEREST

If the Council sells or transfers its interest in the Premises or in this Lease, the Tenant and the Guarantor must enter into a covenant by deed with the purchaser or transferee in favour of that purchaser or transferee that the Tenant will comply with and be bound by the provisions of this Lease in the form or to the effect of the deed set out in Annexure E and that the guarantee will continue for the benefit of the purchaser. The deed must be executed and delivered to the purchaser or transferee as soon as possible after the purchaser or transferee takes title or transfer of the interest.

32. PERSONAL PROPERTY SECURITIES

32.1 Registration of a PPS Security

The Council may register on the PPS Register a PPS Security Interest in respect of:

- (a) any of the Council's Installations or other Council's property being personal property as defined in the PPS Act;
- (b) any of the Tenant's Property being personal property as defined in the PPS Act and which are abandoned or regarded as abandoned to the Council in accordance with this Lease to secure payment to the Council of any amount owed by the Tenant to the Council at any time and in that regard this Lease is a security agreement as defined in the PPS Act; and
- (c) any thing in this Lease which is or contains a PPS Security Interest.

32.2 Tenant to Co-operate

The Tenant must sign all documents and do all things reasonably required so that the Council is able to register on the PPS Register the PPS Security Interest referred to in this clause 32.

32.3 Waiver

Insofar as it is able and in accordance with section 144 of the PPS Act, the Tenant waives its right to receive notice under sections 95, 118, 121, 130, 132 and 135 of the PPS Act in respect of any Security Interest referred to in this clause 32.

33. ENVIRONMENTAL

33.1 Compliance with Laws and Notices

The Tenant must:

- (a) comply with Environmental Laws;
- (b) promptly notify the Council of any breach of any Environmental Law and of any statutory notices received by the Tenant:
 - (i) relating to a breach or alleged breach of an Environmental Law; or
 - (ii) requiring any works to be carried out in relation to the Premises, or any land adjoining the Premises; or
 - (iii) relating to any Contaminant affecting the Premises or immediately adjoining lands as a result of the Tenant's Permitted Use; and
- (c) take all necessary and reasonable steps to ensure that the Tenant does not cause or permit any contamination of the Premises; and
- (d) maintain an environmental register where required by any governmental, public, statutory or relevant authority.

33.2 Council's Right to Monitor and Inspect

The Tenant must at all reasonable times and on reasonable notice permit the Council to:

- (a) monitor the Tenant's compliance with Environmental Laws;
- (b) enter upon the Premises to inspect the Premises, take samples and make tests to monitor the Tenant's compliance with Environmental Laws; and
- (c) inspect any environmental registers or other records required to be kept by any governmental, public, statutory or relevant authority.

33.3 Council's Obligations

In exercising the rights under this clause 33, the Council must:

- (a) give reasonable prior notice to the Tenant of the Council's intention to exercise those rights;
- (b) cause as little inconvenience as possible to the Tenant's Business, use and

occupation of the Premises.

33.4 Remediation Works

- (a) Where the Tenant's use and occupation of the Premises results in the Tenant breaching this clause 33, it must carry out remediation works lawfully required by any governmental, public, statutory or relevant authority, to remove Contamination or otherwise to comply with Environmental Laws.
- (b) The works referred to in clause 33.4(a) must be undertaken by the Tenant:
 - (i) at the Tenant's sole expense; and
 - (ii) in a proper and workmanlike manner; and
 - (iii) by parties approved by the Council.
- (c) Notwithstanding anything else contained in this Lease, the Council is entitled to retain the Security as security for the Tenant undertaking and completing any remediation works in accordance with clause 33.4.

33.5 Tenant's Indemnity

The Tenant indemnifies and shall keep indemnified the Council against all Claims, suits, actions, liability, clean-up costs or Loss whatsoever which the Council may suffer or incur arising directly or indirectly from any breach by the Tenant of any Environmental Law in respect of the Premises.

34. CONFIDENTIALITY

The Tenant must not disclose any terms of this Lease or provide or allow to be provided a copy of all or part of this Lease to any person or entity other than a Permitted Recipient except with the Council's prior written consent which consent may be withheld in the Council's absolute discretion or when required to do so by law or court order.

35. ESSENTIAL SERVICES

The parties confirm that while Part 12 of the *Building Interim Regulations 2017* (**Essential Safety Measures Law**) imposes certain obligations on the owner of a building to provide and maintain "essential safety measures" as required for the particular building, the Tenant is deemed to be the owner of any buildings it has constructed on the Land in accordance with the terms and conditions of this Lease. The Tenant occupies the Premises to the exclusion of the Council in accordance with the terms of this Lease and strict compliance by the Council with the Essential Safety Measures Law might be compromised by the tenancy. Accordingly, the Tenant must:

- (a) refrain from conduct which alters or compromises the proper working condition of any emergency exit doors, paths of travel, smoke detectors, emergency lighting, exit signs and other essential services at the Premises;
- (b) maintain the display of any determination or annual essential safety measures report and report of maintenance checks, service and repair work that are kept on the Premises under the Essential Safety Measures Law; and
- (c) indemnify and hold the Council harmless for any breach by the Tenant of its covenants above for any damage to person or property which occurs as a result of failure of the Tenant to comply with this clause and for any fines which might be imposed as a result of a breach.

36. ENVIRONMENTAL RATING

36.1 Definitions

In this clause 36:

- (a) **Energy Laws** means any legislation or regulations relating to sustainability, energy efficiency, energy production and energy consumption.
- (b) **Environmental Rating** means any rating assigned to the Premises or part thereof

which rates the environmental impact of the Premises or part thereof in respect of environmental matters including, without limitation, energy use, water use and production, air quality and carbon and waste and specifically including any NABERS energy rating.

36.2 Compliance with Directions

- (a) The Tenant must comply with the reasonable directions of the Council in order to maintain and improve any Environmental Rating that applies to the Premises.
- (b) The Tenant must:
 - (i) if requested by the Council, keep accurate records about energy production and energy consumption at the Premises and provide such records to the Council on demand; and
 - (ii) provide the Council with access to the Premises to enable the Council to monitor and collect information about energy production and energy consumption at the Premises.

36.3 Use of Information

The Tenant irrevocably authorises the Council to use any information it collects about energy production and energy consumption at the Premises to enable the Council to comply with its obligations under any Energy Laws.

36.4 Environmental Rating

The Tenant must not do anything which would negatively impact on the Environmental Rating of the Premises.

37. PERSONAL INFORMATION

37.1 Definitions

In this clause, "personal information" has the same meaning as is defined in the *Privacy Act 1988* (Cth).

37.2 Collection and Disclosure

The Tenant (if a natural person) and each Guarantor each acknowledge and agree that:

- (a) the Council and the Council's solicitors may collect personal information from the Tenant and the Guarantor, including the personal information contained in the Schedule, information collected by the Council's agent and information which must be provided by the Tenant pursuant to this Lease;
- (b) the disclosure to, and use by, the Council, the Council's solicitors and the Council's related entities, financiers, banks, agents, third party contractors and service providers engaged by the Council and any governmental, public, statutory or relevant authority affecting the Premises, of that personal information is for the purpose of:
 - (i) confirming the Tenant's identity;
 - (ii) approving the Tenant as a tenant of the Premises;
 - (iii) enabling the Council to comply with its obligations under any law, arrangement or agreement affecting the Premises, including the Council's obligations to third parties, such as the Council's financiers, or to any governmental, public, statutory or relevant authority;
 - (iv) enabling the Council to exercise its rights under this Lease;
 - (v) enabling the Council to comply with any lawful requirement to disclose the personal information; and
 - (vi) enabling the Council to obtain a valuation of the Premises or sell the Premises.

37.3 Acknowledgement and Agreement

By signing this Lease, the Tenant and Guarantor acknowledge and agree that:

- (a) the personal information collected is held by the Council subject to the requirements of the Privacy Act 1988 (Cth) and the Tenant may request access to that information at any time;
- (b) within a reasonable time of the Tenant's personal information changing, the Tenant will provide to the Council details of any updated or amended personal information;
- (c) the Tenant may request that the personal information be corrected; and
- (d) they have read and understood this clause 37.

38. ADDITIONAL CONDITIONS

Additional conditions (if any) are described in Item 21 of Schedule. If there is a conflict between this Lease and the additional conditions, the additional conditions shall prevail.

EXECUTED AS A DEED on the _____ day of _____ 2023

SIGNED SEALED AND DELIVERED by _____)
)
on behalf of **MANSFIELD SHIRE**)
COUNCIL, pursuant to an Instrument of)
Delegation authorised by Resolution of the)
Mansfield Shire Council in the presence of)
_____)

.....
Signature
.....
(Print) Full Name of Signatory

.....
Signature of Witness*

.....
(Print) Full Name of Witness*

.....
Usual address

*Signature and identity have been verified by
Mansfield Shire Council

EXECUTED by **E.B. Mawson & Sons**)
Proprietary Limited (ABN. 14 004 519 617))
in accordance with section 127 of the)
Corporations Act 2001 (Cth):

.....
Director

.....
(Print) Full Name

.....
Usual address

.....
Director/Secretary

.....
(Print) Full Name

.....
Usual address

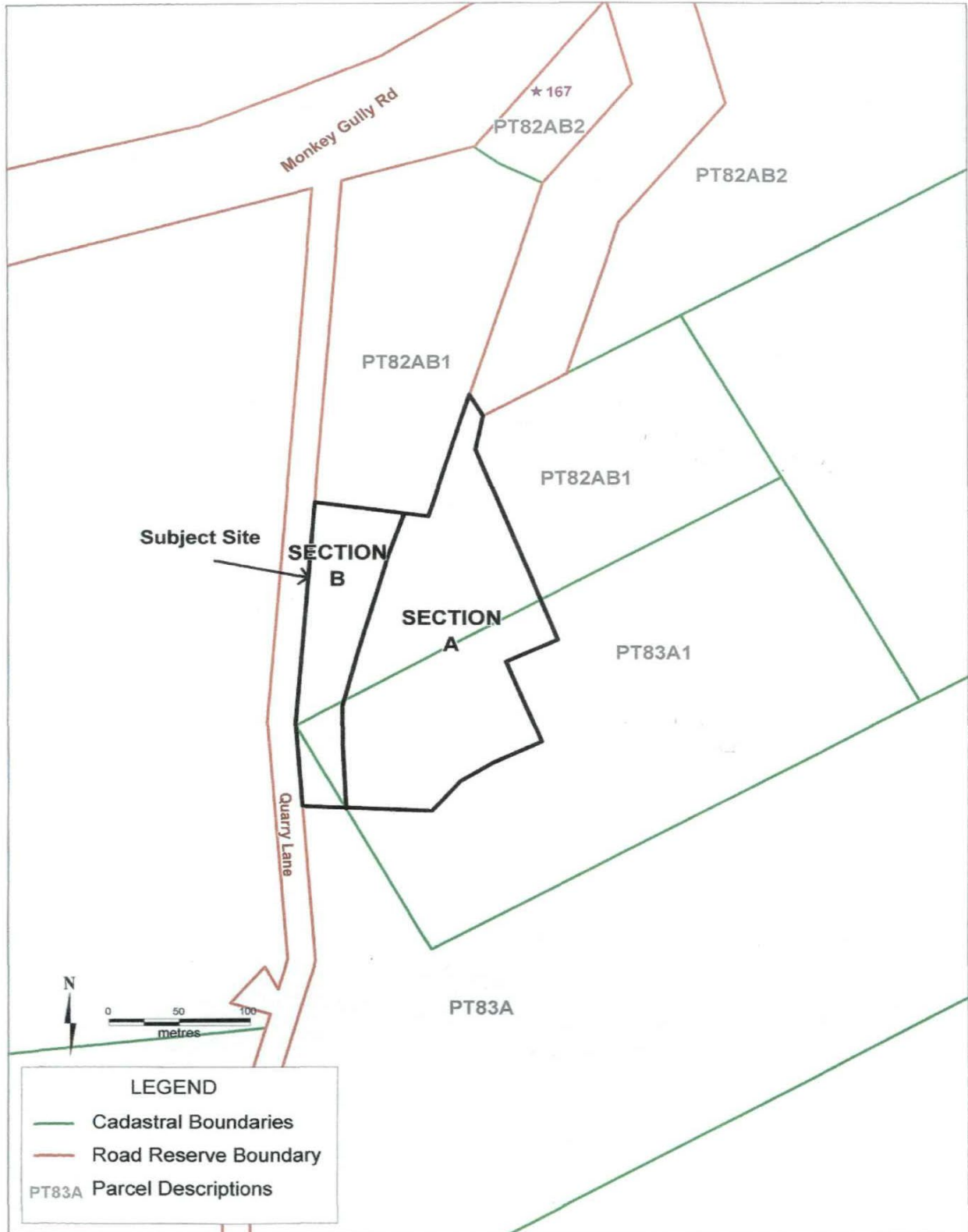
SCHEDULE

ITEM 1	Council:	Mansfield Shire Council ABN 74 566 864 923 of 33 Highett Street, Mansfield, Victoria 3722
ITEM 2	Tenant:	E.B. Mawson & Sons Proprietary Limited ABN 14 004 519 617 of 141 King Street, Cohuna Victoria 3568
ITEM 3	Guarantor:	Not Applicable.
ITEM 4	Land:	The part Crown Allotments 83A1, 83A, 82AB2 and 82AB1 being the land situated at Monkey Gully Road, Mansfield Victoria 3722 referred to in the attached Appendix "A".
82AB1	Council's Installations:	Nil.
ITEM 6	Rent: Clause 4.1	\$8,560.00 per annum plus GST.
ITEM 7	Not used:	
ITEM 8	Term of the Lease: Clause 3.1	5 years
ITEM 9	Commencement Date: Clause 2.3	1 August, 2023
ITEM 10	Expiry Date:	31 July 2028
ITEM 11	How Rent is to be paid: Clause 4.1	Rent is to be paid quarterly in advance.
ITEM 12	Tenant's Proportion:	100% of Outgoings.
ITEM 13	Risks which the insurance policies must cover: Clause 10	Fire Flood Lightning Storm and Tempest Explosion Riots and Civil Commotion Strikes Malicious Damage Earthquake Impact by Vehicles Impact by Aircraft and articles dropped from them Internal Flood Water

		and such other risks as the Council reasonably specifies from time to time.
ITEM 14	Amount of public risk insurance cover: Clause 10.1	\$20,000,000 or other amount reasonably specified from time to time by the Council.
ITEM 15	Interest rate on overdue money:	4% per annum more than the rate from time to time fixed by the <i>Penalty Interest Rates Act 1983</i> (Vic).
ITEM 16	Permitted Use: Clause 14.1	Operation of mobile rock crushing plant and stockpiling of gravel as to the land shown as "A" on the annexed plan and the handling processing and stock-piling of green waste as to the land shown as "B" on the annexed plan.
ITEM 17(a)	Market Rent Review Date: Clause 7	On the commencement date of each Further Term.
ITEM 17(b)	CPI Review Dates Clause 6	The Rent shall be increased by CPI on each anniversary of the Commencement Date during the Term and each anniversary of the Commencement Date during any Further Term.
ITEM 18	Further Term(s): Clause 3.2	Year by Year
ITEM 19	Security: Clause 25	Not Applicable
ITEM 20	Does the mediation procedure apply to this Lease?	The mediation procedure applies to this Lease.
ITEM 21	Additional Conditions	Additional conditions are attached as Annexure A

ANNEXURE "A" Additional Conditions

Resource Recovery Lease Area



ANNEXURE "A"

Additional Conditions (cont.)

ITEM 22	Additional Provisions	<p>22.1 Planning Scheme</p> <p>Mansfield Shire Council's Planning Scheme requires a permit for the "development and use" of the land. Construction of any buildings and use of the land for any activity shall not commence until all of the necessary permits are obtained from Council.</p>
		<p>22.2 Services</p> <p>Responsibility for water, power and sewerage will be at the tenant's expense.</p>
		<p>22.3 Environmental Requirements</p> <p>The tenant undertakes that if the capacity of composting or vermiculture production is in excess of ten (10) tonnes daily it will be responsible for compliance under the Environment Protection (Schedule Premises and Exemptions) regulations 1995 and, if required, subject to works approval provisions of the Environment Protection Act if required, subject to works approval provisions of the Environment Protection Act 1970. The tenant further undertakes that if the capacity of composting or vermiculture production is less than ten (10) tonnes daily then it will be responsible for the protection of surface and ground water by ensuring that siting maintains adequate buffer distances and process materials are contained within bundled areas.</p>
		<p>22.4 Maintenance Works – Quarry Lane</p> <p>Maintenance and other associated works including mulching and slashing of regrowth along the roadside reserve to maintain available site distances, regular grading and resheeting of the Quarry Lane pavement, clearance of blockages in drainage systems and other works as required. Maintenance of roadside safety signage and guideposts. Maintenance works will be carried out by E.B. Mawson & Sons on an as required basis over the duration of this Agreement.</p>

ANNEXURE "B"

Resource Recovery Lease Area



