

# Contract for the sale and purchase of land 2018 edition

<b>TERM</b>	<b>MEANING OF TERM</b>	<b>NSW Duty:</b>
vendor's agent	<b>Ray White Seaforth ABN:44 164 392 714</b> <b>48A Ethel Street, Seaforth NSW 2092</b> <b>Email: <a href="mailto:mark.griffiths@raywhite.com">mark.griffiths@raywhite.com</a></b>	<b>Phone: (02) 9948 6069</b> <b>Ref: Mark Griffith</b>
co-agent		
vendor	<b>Emma Catherine Lee</b>	
vendor's solicitor	<b>R.G.Williams &amp; Associates</b> <b>Level 13, 135 King Street, Sydney NSW 2000</b> <b>PO Box 706, Cremorne NSW 2090</b>	<b>Phone: 0488 688 008</b> <b>Fax:</b> <b>Ref: RGW:EL:190007</b> <b>E: <a href="mailto:info@williamslaws.com.au">info@williamslaws.com.au</a></b>
date for completion land (address, plan details and title reference)	<b>42nd day after the contract date</b> <b>SHOP2/572 MILITARY ROAD, Mosman, New South Wales 2088</b> <b>Registered Plan: Lot 11 Plan SP 85065</b> <b>Folio Identifier 11/SP85065</b>	(clause 15)
improvements	<input type="checkbox"/> VACANT POSSESSION <input checked="" type="checkbox"/> subject to existing tenancies <input type="checkbox"/> HOUSE <input type="checkbox"/> garage <input type="checkbox"/> carport <input type="checkbox"/> home unit <input checked="" type="checkbox"/> carspace <input type="checkbox"/> storage space <input type="checkbox"/> none <input checked="" type="checkbox"/> other: SHOP	
attached copies	<input checked="" type="checkbox"/> documents in the List of Documents as marked or as numbered: <input type="checkbox"/> other documents:	

**A real estate agent is permitted by legislation to fill up the items in this box in a sale of residential property.**

inclusions	<input type="checkbox"/> blinds	<input type="checkbox"/> dishwasher	<input type="checkbox"/> light fittings	<input type="checkbox"/> stove
	<input type="checkbox"/> built-in wardrobes	<input type="checkbox"/> fixed floor coverings	<input type="checkbox"/> range hood	<input type="checkbox"/> pool equipment
	<input type="checkbox"/> clothes line	<input type="checkbox"/> insect screens	<input type="checkbox"/> solar panels	<input type="checkbox"/> TV antenna
	<input type="checkbox"/> curtains	<input type="checkbox"/> other:		
exclusions				
purchaser				
purchaser's solicitor				
price	\$			
deposit	\$			(10% of the price, unless otherwise stated)
balance	\$			
contract date				(if not stated, the date this contract was made)

buyer's agent

\_\_\_\_\_  
**vendor**

**GST AMOUNT (optional)**

The price includes  
 GST of: \$

\_\_\_\_\_  
**witness**

\_\_\_\_\_  
**purchaser**  JOINT TENANTS  tenants in common  in unequal shares

\_\_\_\_\_  
**witness**

**Choices**

Vendor agrees to accept a **deposit-bond** (clause 3)  NO  yes  
**Proposed electronic transaction** (clause 30)  no  YES

**Tax information (the parties promise this is correct as far as each party is aware)**

**Land tax** is adjustable  NO  yes  
**GST:** Taxable supply  NO  yes in full  yes to an extent  
 Margin scheme will be used in making the taxable supply  NO  yes

This sale is not a taxable supply because (one or more of the following may apply) the sale is:

- not made in the course or furtherance of an enterprise that the vendor carries on (section 9-5(b))  
 by a vendor who is neither registered nor required to be registered for GST (section 9-5(d))  
 GST-free because the sale is the supply of a going concern under section 38-325  
 GST-free because the sale is subdivided farm land or farm land supplied for farming under Subdivision 38-O  
 input taxed because the sale is of eligible residential premises (sections 40-65, 40-75(2) and 195-1)

Purchaser must make an *RW payment* (residential withholding payment)  NO  yes (if yes, vendor must provide further details)

If the further details below are not fully completed at the contract date, the vendor must provide all these details in a separate notice within 14 days of the contract date.

***RW payment (residential withholding payment) – further details***

Frequently the supplier will be the vendor. However, sometimes further information will be required as to which entity is liable for GST, for example, if the vendor is part of a GST group or a participant in a GST joint venture.

Supplier's name:

Supplier's ABN:

Supplier's business address:

Supplier's email address:

Supplier's phone number:

Supplier's proportion of *RW payment*:

If more than one supplier, provide the above details for each supplier.

Amount purchaser must pay – price multiplied by the *RW rate* (residential withholding rate):

Amount must be paid:  AT COMPLETION  at another time (specify):

Is any of the consideration not expressed as an amount in money?  NO  yes

If "yes", the GST inclusive market value of the non-monetary consideration: \$

Other details (including those required by regulation or the ATO forms):

## List of Documents

General	Strata or community title (clause 23 of the contract)
<input checked="" type="checkbox"/> 1 property certificate for the land <input type="checkbox"/> 2 plan of the land <input type="checkbox"/> 3 unregistered plan of the land <input type="checkbox"/> 4 plan of land to be subdivided <input type="checkbox"/> 5 document that is to be lodged with a relevant plan <input checked="" type="checkbox"/> 6 section 10.7(2) planning certificate under Environmental Planning and Assessment Act 1979 <input type="checkbox"/> 7 additional information included in that certificate under section 10.7(5) <input checked="" type="checkbox"/> 8 sewerage infrastructure location diagram (service location diagram) <input checked="" type="checkbox"/> 9 sewer lines location diagram (sewerage service diagram) <input type="checkbox"/> 10 document that created or may have created an easement, profit à prendre, restriction on use or positive covenant disclosed in this contract <input type="checkbox"/> 11 <i>planning agreement</i> <input type="checkbox"/> 12 section 88G certificate (positive covenant) <input type="checkbox"/> 13 survey report <input type="checkbox"/> 14 building information certificate or building certificate given under <i>legislation</i> <input type="checkbox"/> 15 lease (with every relevant memorandum or variation) <input type="checkbox"/> 16 other document relevant to tenancies <input type="checkbox"/> 17 licence benefiting the land <input type="checkbox"/> 18 old system document <input type="checkbox"/> 19 Crown purchase statement of account <input type="checkbox"/> 20 building management statement <input type="checkbox"/> 21 form of requisitions <input checked="" type="checkbox"/> 22 <i>clearance certificate</i> <input type="checkbox"/> 23 land tax certificate	<input type="checkbox"/> 32 property certificate for strata common property <input checked="" type="checkbox"/> 33 plan creating strata common property <input checked="" type="checkbox"/> 34 strata by-laws <input type="checkbox"/> 35 strata development contract or statement <input type="checkbox"/> 36 strata management statement <input type="checkbox"/> 37 strata renewal proposal <input type="checkbox"/> 38 strata renewal plan <input type="checkbox"/> 39 leasehold strata - lease of lot and common property <input type="checkbox"/> 40 property certificate for neighbourhood property <input type="checkbox"/> 41 plan creating neighbourhood property <input type="checkbox"/> 42 neighbourhood development contract <input type="checkbox"/> 43 neighbourhood management statement <input type="checkbox"/> 44 property certificate for precinct property <input type="checkbox"/> 45 plan creating precinct property <input type="checkbox"/> 46 precinct development contract <input type="checkbox"/> 47 precinct management statement <input type="checkbox"/> 48 property certificate for community property <input type="checkbox"/> 49 plan creating community property <input type="checkbox"/> 50 community development contract <input type="checkbox"/> 51 community management statement <input type="checkbox"/> 52 document disclosing a change of by-laws <input type="checkbox"/> 53 document disclosing a change in a development or management contract or statement <input type="checkbox"/> 54 document disclosing a change in boundaries <input type="checkbox"/> 55 information certificate under Strata Schemes Management Act 2015 <input type="checkbox"/> 56 information certificate under Community Land Management Act 1989 <input type="checkbox"/> 57 document relevant to off-the-plan sale <b>Other</b> <input type="checkbox"/> 58
<b>Home Building Act 1989</b> <input type="checkbox"/> 24 insurance certificate <input type="checkbox"/> 25 brochure or warning <input type="checkbox"/> 26 evidence of alternative indemnity cover <b>Swimming Pools Act 1992</b> <input type="checkbox"/> 27 certificate of compliance <input type="checkbox"/> 28 evidence of registration <input type="checkbox"/> 29 relevant occupation certificate <input type="checkbox"/> 30 certificate of non-compliance <input type="checkbox"/> 31 detailed reasons of non-compliance	

**HOLDER OF STRATA OR COMMUNITY TITLE RECORDS – Name, address, email address and telephone number**

**IMPORTANT NOTICE TO VENDORS AND PURCHASERS**

Before signing this contract you should ensure that you understand your rights and obligations, some of which are not written in this contract but are implied by law.

**WARNING—SMOKE ALARMS**

The owners of certain types of buildings and strata lots must have smoke alarms (or in certain cases heat alarms) installed in the building or lot in accordance with regulations under the *Environmental Planning and Assessment Act 1979*. It is an offence not to comply. It is also an offence to remove or interfere with a smoke alarm or heat alarm. Penalties apply.

**WARNING—LOOSE-FILL ASBESTOS INSULATION**

Before purchasing land that includes any residential premises (within the meaning of Division 1A of Part 8 of the *Home Building Act 1989*) built before 1985, a purchaser is strongly advised to consider the possibility that the premises may contain loose-fill asbestos insulation (within the meaning of Division 1A of Part 8 of the *Home Building Act 1989*). In particular, a purchaser should:

- (a) search the Register required to be maintained under Division 1A of Part 8 of the *Home Building Act 1989*, and
- (b) ask the relevant local council whether it holds any records showing that the residential premises contain loose-fill asbestos insulation.

For further information about loose-fill asbestos insulation (including areas in which residential premises have been identified as containing loose-fill asbestos insulation), contact NSW Fair Trading.

### **COOLING OFF PERIOD (PURCHASER'S RIGHTS)**

1. This is the statement required by section 66X of the *Conveyancing Act 1919* and applies to a contract for the sale of residential property.
2. The purchaser may rescind the contract at any time before 5 p.m. on the fifth business day after the day on which the contract was made, **EXCEPT** in the circumstances listed in paragraph 3.
3. There is **NO COOLING OFF PERIOD**:
  - (a) if, at or before the time the contract is made, the purchaser gives to the vendor (or the vendor's solicitor or agent) a certificate that complies with section 66W of the Act, or
  - (b) if the property is sold by public auction, or
  - (c) if the contract is made on the same day as the property was offered for sale by public auction but passed in, or
  - (d) if the contract is made in consequence of the exercise of an option to purchase the property, other than an option that is void under section 66ZG of the Act.
4. A purchaser exercising the right to cool off by rescinding the contract will forfeit to the vendor 0.25% of the purchase price of the property. The vendor is entitled to recover the amount forfeited from any amount paid by the purchaser as a deposit under the contract and the purchaser is entitled to a refund of any balance.

### **DISPUTES**

If you get into a dispute with the other party, the Law Society and Real Estate Institute encourage you to use informal procedures such as negotiation, independent expert appraisal, the Law Society Conveyancing Dispute Resolution Scheme or mediation (for example mediation under the Law Society Mediation Program).

### **AUCTIONS**

Regulations made under the Property, Stock and Business Agents Act 2002 prescribe a number of conditions applying to sales by auction.

**WARNINGS**

1. Various Acts of Parliament and other matters can affect the rights of the parties to this contract. Some important matters are actions, claims, decisions, licences, notices, orders, proposals or rights of way involving:

Australian Taxation Office	NSW Fair Trading
Council	NSW Public Works Advisory
County Council	Office of Environment and Heritage
Department of Planning and Environment	Owner of adjoining land
Department of Primary Industries	Privacy
East Australian Pipeline Limited	Roads and Maritime Services
Electricity and gas	Subsidence Advisory NSW
Land & Housing Corporation	Telecommunications
Local Land Services	Transport for NSW
NSW Department of Education	Water, sewerage or drainage authority

If you think that any of these matters affects the property, tell your solicitor.

2. A lease may be affected by the Agricultural Tenancies Act 1990, the Residential Tenancies Act 2010 or the Retail Leases Act 1994.
3. If any purchase money is owing to the Crown, it will become payable before obtaining consent, or if no consent is needed, when the transfer is registered.
4. If a consent to transfer is required under legislation, see clause 27 as to the obligations of the parties.
5. The vendor should continue the vendor's insurance until completion. If the vendor wants to give the purchaser possession before completion, the vendor should first ask the insurer to confirm this will not affect the insurance.
6. The purchaser will usually have to pay stamp duty (and sometimes surcharge purchaser duty) on this contract. If duty is not paid on time, a purchaser may incur penalties.
7. If the purchaser agrees to the release of deposit, the purchaser's right to recover the deposit may stand behind the rights of others (for example the vendor's mortgagee).
8. The purchaser should arrange insurance as appropriate.
9. Some transactions involving personal property may be affected by the Personal Property Securities Act 2009.
10. A purchaser should be satisfied that finance will be available at the time of completing the purchase.
11. Where the market value of the property is at or above a legislated amount, the purchaser may have to comply with a foreign resident capital gains withholding payment obligation (even if the vendor is not a foreign resident). If so, this will affect the amount available to the vendor on completion.
12. Purchasers of some residential properties may have to withhold part of the purchase price to be credited towards the GST liability of the vendor. If so, this will also affect the amount available to the vendor.

The vendor sells and the purchaser buys the *property* for the price under these provisions instead of Schedule 3 Conveyancing Act 1919, subject to any *legislation* that cannot be excluded.

## 1 Definitions (a term in italics is a defined term)

In this contract, these terms (in any form) mean –

<i>adjustment date</i>	the earlier of the giving of possession to the purchaser or completion;
<i>bank</i>	the Reserve Bank of Australia or an authorised deposit-taking institution which is a bank, a building society or a credit union;
<i>business day</i>	any day except a bank or public holiday throughout NSW or a Saturday or Sunday;
<i>cheque</i>	a cheque that is not postdated or stale;
<i>clearance certificate</i>	a certificate within the meaning of s14-220 of Schedule 1 to the <i>TA Act</i> , that covers one or more days falling within the period from and including the contract date to completion;
<i>deposit-bond</i>	a deposit bond or guarantee from an issuer, with an expiry date and for an amount each approved by the vendor;
<i>depositholder</i>	vendor's agent (or if no vendor's agent is named in this contract, the vendor's <i>solicitor</i> , or if no vendor's <i>solicitor</i> is named in this contract, the buyer's agent);
<i>document of title</i>	document relevant to the title or the passing of title;
<i>FRCGW percentage</i>	the percentage mentioned in s14-200(3)(a) of Schedule 1 to the <i>TA Act</i> (12.5% as at 1 July 2017);
<i>GST Act</i>	A New Tax System (Goods and Services Tax) Act 1999;
<i>GST rate</i>	the rate mentioned in s4 of A New Tax System (Goods and Services Tax Imposition - General) Act 1999 (10% as at 1 July 2000);
<i>legislation</i>	an Act or a by-law, ordinance, regulation or rule made under an Act;
<i>normally</i>	subject to any other provision of this contract;
<i>party</i>	each of the vendor and the purchaser;
<i>property</i>	the land, the improvements, all fixtures and the inclusions, but not the exclusions;
<i>planning agreement</i>	a valid voluntary agreement within the meaning of s7.4 of the Environmental Planning and Assessment Act 1979 entered into in relation to the <i>property</i> ;
<i>requisition</i>	an objection, question or requisition (but the term does not include a claim);
<i>remittance amount</i>	the lesser of the <i>FRCGW percentage</i> of the price (inclusive of GST, if any) and the amount specified in a <i>variation served by a party</i> ;
<i>rescind</i>	rescind this contract from the beginning;
<i>RW payment</i>	a payment which the purchaser must make under s14-250 of Schedule 1 to the <i>TA Act</i> (the price multiplied by the <i>RW rate</i> );
<i>RW rate</i>	the rate determined under ss14-250(6), (8) or (9) of Schedule 1 to the <i>TA Act</i> (as at 1 July 2018, usually 7% of the price if the margin scheme applies, 1/11 <sup>th</sup> if not);
<i>serve</i>	serve in writing on the other <i>party</i> ;
<i>settlement cheque</i>	an unendorsed <i>cheque</i> made payable to the person to be paid and – <ul style="list-style-type: none"> <li>• issued by a <i>bank</i> and drawn on itself; or</li> <li>• if authorised in writing by the vendor or the vendor's <i>solicitor</i>, some other <i>cheque</i>;</li> </ul>
<i>solicitor</i>	in relation to a <i>party</i> , the <i>party's</i> solicitor or licensed conveyancer named in this contract or in a notice <i>served by the party</i> ;
<i>TA Act</i>	Taxation Administration Act 1953;
<i>terminate</i>	terminate this contract for breach;
<i>variation</i>	a variation made under s14-235 of Schedule 1 to the <i>TA Act</i> ;
<i>within</i>	in relation to a period, at any time before or during the period; and
<i>work order</i>	a valid direction, notice or order that requires work to be done or money to be spent on or in relation to the <i>property</i> or any adjoining footpath or road (but the term does not include a notice under s22E of the Swimming Pools Act 1992 or clause 18B of the Swimming Pools Regulation 2008).

## 2 Deposit and other payments before completion

- 2.1 The purchaser must pay the deposit to the *depositholder* as stakeholder.
- 2.2 *Normally*, the purchaser must pay the deposit on the making of this contract, and this time is essential.
- 2.3 If this contract requires the purchaser to pay any of the deposit by a later time, that time is also essential.
- 2.4 The purchaser can pay any of the deposit by giving cash (up to \$2,000) or by unconditionally giving a *cheque* to the *depositholder* or to the vendor, vendor's agent or vendor's *solicitor* for sending to the *depositholder*.
- 2.5 If any of the deposit is not paid on time or a *cheque* for any of the deposit is not honoured on presentation, the vendor can *terminate*. This right to *terminate* is lost as soon as the deposit is paid in full.
- 2.6 If the vendor accepts a bond or guarantee for the deposit, clauses 2.1 to 2.5 do not apply.
- 2.7 If the vendor accepts a bond or guarantee for part of the deposit, clauses 2.1 to 2.5 apply only to the balance.

- 2.8 If any of the deposit or of the balance of the price is paid before completion to the vendor or as the vendor directs, it is a charge on the land in favour of the purchaser until *termination* by the vendor or completion, subject to any existing right.
- 2.9 If each *party* tells the *depositholder* that the deposit is to be invested, the *depositholder* is to invest the deposit (at the risk of the *party* who becomes entitled to it) with a *bank*, in an interest-bearing account in NSW, payable at call, with interest to be reinvested, and pay the interest to the *parties* equally, after deduction of all proper government taxes and financial institution charges and other charges.

### 3 Deposit-bond

- 3.1 This clause applies only if this contract says the vendor has agreed to accept a *deposit-bond* for the deposit (or part of it).
- 3.2 The purchaser must provide the original *deposit-bond* to the vendor's *solicitor* (or if no *solicitor* the *depositholder*) at or before the making of this contract and this time is essential.
- 3.3 If the *deposit-bond* has an expiry date and completion does not occur by the date which is 14 days before the expiry date, the purchaser must *serve* a replacement *deposit-bond* at least 7 days before the expiry date. The time for service is essential.
- 3.4 The vendor must approve a replacement *deposit-bond* if –
- 3.4.1 it is from the same issuer and for the same amount as the earlier *deposit-bond*; and
- 3.4.2 it has an expiry date at least three months after its date of issue.
- 3.5 A breach of clauses 3.2 or 3.3 entitles the vendor to *terminate*. The right to *terminate* is lost as soon as –
- 3.5.1 the purchaser *serves* a replacement *deposit-bond*; or
- 3.5.2 the deposit is paid in full under clause 2.
- 3.6 Clauses 3.3 and 3.4 can operate more than once.
- 3.7 If the purchaser *serves* a replacement *deposit-bond*, the vendor must *serve* the earlier *deposit-bond*.
- 3.8 The amount of any *deposit-bond* does not form part of the price for the purposes of clause 16.7.
- 3.9 The vendor must give the purchaser the *deposit-bond* –
- 3.9.1 on completion; or
- 3.9.2 if this contract is *rescinded*.
- 3.10 If this contract is *terminated* by the vendor –
- 3.10.1 *normally*, the vendor can immediately demand payment from the issuer of the *deposit-bond*; or
- 3.10.2 if the purchaser *serves* prior to *termination* a notice disputing the vendor's right to *terminate*, the vendor must forward the *deposit-bond* (or its proceeds if called up) to the *depositholder* as stakeholder.
- 3.11 If this contract is *terminated* by the purchaser –
- 3.11.1 *normally*, the vendor must give the purchaser the *deposit-bond*; or
- 3.11.2 if the vendor *serves* prior to *termination* a notice disputing the purchaser's right to *terminate*, the vendor must forward the *deposit-bond* (or its proceeds if called up) to the *depositholder* as stakeholder.

### 4 Transfer

- 4.1 *Normally*, the purchaser must *serve* at least 14 days before the date for completion –
- 4.1.1 the form of transfer; and
- 4.1.2 particulars required to register any mortgage or other dealing to be lodged with the transfer by the purchaser or the purchaser's mortgagee.
- 4.2 If any information needed for the form of transfer is not disclosed in this contract, the vendor must *serve* it.
- 4.3 If the purchaser *serves* a form of transfer and the transferee is not the purchaser, the purchaser must give the vendor a direction signed by the purchaser personally for this form of transfer.
- 4.4 The vendor can require the purchaser to include a form of covenant or easement in the transfer only if this contract contains the wording of the proposed covenant or easement, and a description of the land benefited.

### 5 Requisitions

- 5.1 If a form of *requisitions* is attached to this contract, the purchaser is taken to have made those *requisitions*.
- 5.2 If the purchaser is or becomes entitled to make any other *requisition*, the purchaser can make it only by *serving* it –
- 5.2.1 if it arises out of this contract or it is a general question about the *property* or title - *within* 21 days after the contract date;
- 5.2.2 if it arises out of anything *served* by the vendor - *within* 21 days after the later of the contract date and that *service*; and
- 5.2.3 in any other case - *within* a reasonable time.

### 6 Error or misdescription

- 6.1 The purchaser can (but only before completion) claim compensation for an error or misdescription in this contract (as to the *property*, the title or anything else and whether substantial or not).
- 6.2 This clause applies even if the purchaser did not take notice of or rely on anything in this contract containing or giving rise to the error or misdescription.
- 6.3 However, this clause does not apply to the extent the purchaser knows the true position.



## 7 Claims by purchaser

- The purchaser can make a claim (including a claim under clause 6) before completion only by *servicing* it with a statement of the amount claimed, and if the purchaser makes one or more claims before completion –
- 7.1 the vendor can *rescind* if in the case of claims that are not claims for delay –
- 7.1.1 the total amount claimed exceeds 5% of the price;
  - 7.1.2 the vendor *serves* notice of intention to *rescind*; and
  - 7.1.3 the purchaser does not *serve* notice waiving the claims *within* 14 days after that *service*; and
- 7.2 if the vendor does not *rescind*, the *parties* must complete and if this contract is completed –
- 7.2.1 the lesser of the total amount claimed and 10% of the price must be paid out of the price to and held by the *depositholder* until the claims are finalised or lapse;
  - 7.2.2 the amount held is to be invested in accordance with clause 2.9;
  - 7.2.3 the claims must be finalised by an arbitrator appointed by the *parties* or, if an appointment is not made *within* 1 month of completion, by an arbitrator appointed by the President of the Law Society at the request of a *party* (in the latter case the *parties* are bound by the terms of the Conveyancing Arbitration Rules approved by the Law Society as at the date of the appointment);
  - 7.2.4 the purchaser is not entitled, in respect of the claims, to more than the total amount claimed and the costs of the purchaser;
  - 7.2.5 net interest on the amount held must be paid to the *parties* in the same proportion as the amount held is paid; and
  - 7.2.6 if the *parties* do not appoint an arbitrator and neither *party* requests the President to appoint an arbitrator *within* 3 months after completion, the claims lapse and the amount belongs to the vendor.

## 8 Vendor's rights and obligations

- 8.1 The vendor can *rescind* if –
- 8.1.1 the vendor is, on reasonable grounds, unable or unwilling to comply with a *requisition*;
  - 8.1.2 the vendor *serves* a notice of intention to *rescind* that specifies the *requisition* and those grounds; and
  - 8.1.3 the purchaser does not *serve* a notice waiving the *requisition within* 14 days after that *service*.
- 8.2 If the vendor does not comply with this contract (or a notice under or relating to it) in an essential respect, the purchaser can *terminate* by *servicing* a notice. After the *termination* –
- 8.2.1 the purchaser can recover the deposit and any other money paid by the purchaser under this contract;
  - 8.2.2 the purchaser can sue the vendor to recover damages for breach of contract; and
  - 8.2.3 if the purchaser has been in possession a *party* can claim for a reasonable adjustment.

## 9 Purchaser's default

- If the purchaser does not comply with this contract (or a notice under or relating to it) in an essential respect, the vendor can *terminate* by *servicing* a notice. After the *termination* the vendor can –
- 9.1 keep or recover the deposit (to a maximum of 10% of the price);
- 9.2 hold any other money paid by the purchaser under this contract as security for anything recoverable under this clause –
- 9.2.1 for 12 months after the *termination*; or
  - 9.2.2 if the vendor commences proceedings under this clause *within* 12 months, until those proceedings are concluded; and
- 9.3 sue the purchaser either –
- 9.3.1 where the vendor has resold the *property* under a contract made *within* 12 months after the *termination*, to recover –
    - the deficiency on resale (with credit for any of the deposit kept or recovered and after allowance for any capital gains tax or goods and services tax payable on anything recovered under this clause); and
    - the reasonable costs and expenses arising out of the purchaser's non-compliance with this contract or the notice and of resale and any attempted resale; or
  - 9.3.2 to recover damages for breach of contract.

## 10 Restrictions on rights of purchaser

- 10.1 The purchaser cannot make a claim or *requisition* or *rescind* or *terminate* in respect of –
- 10.1.1 the ownership or location of any fence as defined in the Dividing Fences Act 1991;
  - 10.1.2 a service for the *property* being a joint service or passing through another property, or any service for another property passing through the *property* ('service' includes air, communication, drainage, electricity, garbage, gas, oil, radio, sewerage, telephone, television or water service);
  - 10.1.3 a wall being or not being a party wall in any sense of that term or the *property* being affected by an easement for support or not having the benefit of an easement for support;
  - 10.1.4 any change in the *property* due to fair wear and tear before completion;

- 10.1.5 a promise, representation or statement about this contract, the *property* or the title, not set out or referred to in this contract;
- 10.1.6 a condition, exception, reservation or restriction in a Crown grant;
- 10.1.7 the existence of any authority or licence to explore or prospect for gas, minerals or petroleum;
- 10.1.8 any easement or restriction on use the substance of either of which is disclosed in this contract or any non-compliance with the easement or restriction on use; or
- 10.1.9 anything the substance of which is disclosed in this contract (except a caveat, charge, mortgage, priority notice or writ).
- 10.2 The purchaser cannot *rescind* or *terminate* only because of a defect in title to or quality of the inclusions.
- 10.3 *Normally*, the purchaser cannot make a claim or *requisition* or *rescind* or *terminate* or require the vendor to change the nature of the title disclosed in this contract (for example, to remove a caution evidencing qualified title, or to lodge a plan of survey as regards limited title).
- 11 Compliance with work orders**
- 11.1 *Normally*, the vendor must by completion comply with a *work order* made on or before the contract date and if this contract is completed the purchaser must comply with any other *work order*.
- 11.2 If the purchaser complies with a *work order*, and this contract is *rescinded* or *terminated*, the vendor must pay the expense of compliance to the purchaser.
- 12 Certificates and inspections**
- The vendor must do everything reasonable to enable the purchaser, subject to the rights of any tenant –
- 12.1 to have the *property* inspected to obtain any certificate or report reasonably required;
- 12.2 to apply (if necessary in the name of the vendor) for –
- 12.2.1 any certificate that can be given in respect of the *property* under *legislation*; or
- 12.2.2 a copy of any approval, certificate, consent, direction, notice or order in respect of the *property* given under *legislation*, even if given after the contract date; and
- 12.3 to make 1 inspection of the *property* in the 3 days before a time appointed for completion.
- 13 Goods and services tax (GST)**
- 13.1 Terms used in this clause which are not defined elsewhere in this contract and have a defined meaning in the *GST Act* have the same meaning in this clause.
- 13.2 *Normally*, if a *party* must pay the price or any other amount to the other *party* under this contract, GST is not to be added to the price or amount.
- 13.3 If under this contract a *party* must make an adjustment or payment for an expense of another party or pay an expense payable by or to a third party (for example, under clauses 14 or 20.7) –
- 13.3.1 the *party* must adjust or pay on completion any GST added to or included in the expense; but
- 13.3.2 the amount of the expense must be reduced to the extent the party receiving the adjustment or payment (or the representative member of a GST group of which that party is a member) is entitled to an input tax credit for the expense; and
- 13.3.3 if the adjustment or payment under this contract is consideration for a taxable supply, an amount for GST must be added at the *GST rate*.
- 13.4 If this contract says this sale is the supply of a going concern –
- 13.4.1 the *parties* agree the supply of the *property* is a supply of a going concern;
- 13.4.2 the vendor must, between the contract date and completion, carry on the enterprise conducted on the land in a proper and business-like way;
- 13.4.3 if the purchaser is not registered by the date for completion, the *parties* must complete and the purchaser must pay on completion, in addition to the price, an amount being the price multiplied by the *GST rate* ("the retention sum"). The retention sum is to be held by the *depositholder* and dealt with as follows –
- if *within* 3 months of completion the purchaser *serves* a letter from the Australian Taxation Office stating the purchaser is registered with a date of effect of registration on or before completion, the *depositholder* is to pay the retention sum to the purchaser; but
  - if the purchaser does not *serve* that letter *within* 3 months of completion, the *depositholder* is to pay the retention sum to the vendor; and
- 13.4.4 if the vendor, despite clause 13.4.1, *serves* a letter from the Australian Taxation Office stating the vendor has to pay GST on the supply, the purchaser must pay to the vendor on demand the amount of GST assessed.
- 13.5 *Normally*, the vendor promises the margin scheme will not apply to the supply of the *property*.
- 13.6 If this contract says the margin scheme is to apply in making the taxable supply, the *parties* agree that the margin scheme is to apply to the sale of the *property*.
- 13.7 If this contract says the sale is not a taxable supply –
- 13.7.1 the purchaser promises that the *property* will not be used and represents that the purchaser does not intend the *property* (or any part of the *property*) to be used in a way that could make the sale a taxable supply to any extent; and

- 13.7.2 the purchaser must pay the vendor on completion in addition to the price an amount calculated by multiplying the price by the *GST rate* if this sale is a taxable supply to any extent because of –
- a breach of clause 13.7.1; or
  - something else known to the purchaser but not the vendor.
- 13.8 If this contract says this sale is a taxable supply in full and does not say the margin scheme applies to the *property*, the vendor must pay the purchaser on completion an amount of one-eleventh of the price if –
- 13.8.1 this sale is not a taxable supply in full; or
- 13.8.2 the margin scheme applies to the *property* (or any part of the *property*).
- 13.9 If this contract says this sale is a taxable supply to an extent –
- 13.9.1 clause 13.7.1 does not apply to any part of the *property* which is identified as being a taxable supply; and
- 13.9.2 the payments mentioned in clauses 13.7 and 13.8 are to be recalculated by multiplying the relevant payment by the proportion of the price which represents the value of that part of the *property* to which the clause applies (the proportion to be expressed as a number between 0 and 1). Any evidence of value must be obtained at the expense of the vendor.
- 13.10 *Normally*, on completion the vendor must give the recipient of the supply a tax invoice for any taxable supply by the vendor by or under this contract.
- 13.11 The vendor does not have to give the purchaser a tax invoice if the margin scheme applies to a taxable supply.
- 13.12 If the vendor is liable for GST on rents or profits due to issuing an invoice or receiving consideration before completion, any adjustment of those amounts must exclude an amount equal to the vendor's GST liability.
- 13.13 If the purchaser must make an *RW payment* the purchaser must –
- 13.13.1 at least 5 days before the date for completion, *serve* evidence of submission of an *RW payment* notification form to the Australian Taxation Office by the purchaser or, if a direction under clause 4.3 has been *served*, by the transferee named in the transfer *served* with that direction;
- 13.13.2 produce on completion a *settlement cheque* for the *RW payment* payable to the Deputy Commissioner of Taxation;
- 13.13.3 forward the *settlement cheque* to the payee immediately after completion; and
- 13.13.4 *serve* evidence of receipt of payment of the *RW payment*.

## 14 Adjustments

- 14.1 *Normally*, the vendor is entitled to the rents and profits and will be liable for all rates, water, sewerage and drainage service and usage charges, land tax, levies and all other periodic outgoings up to and including the *adjustment date* after which the purchaser will be entitled and liable.
- 14.2 The *parties* must make any necessary adjustment on completion.
- 14.3 If an amount that is adjustable under this contract has been reduced under *legislation*, the *parties* must on completion adjust the reduced amount.
- 14.4 The *parties* must not adjust surcharge land tax (as defined in the Land Tax Act 1956) but must adjust any other land tax for the year current at the *adjustment date* –
- 14.4.1 only if land tax has been paid or is payable for the year (whether by the vendor or by a predecessor in title) and this contract says that land tax is adjustable;
- 14.4.2 by adjusting the amount that would have been payable if at the start of the year –
- the person who owned the land owned no other land;
  - the land was not subject to a special trust or owned by a non-concessional company; and
  - if the land (or part of it) had no separate taxable value, by calculating its separate taxable value on a proportional area basis.
- 14.5 If any other amount that is adjustable under this contract relates partly to the land and partly to other land, the *parties* must adjust it on a proportional area basis.
- 14.6 *Normally*, the vendor can direct the purchaser to produce a *settlement cheque* on completion to pay an amount adjustable under this contract and if so –
- 14.6.1 the amount is to be treated as if it were paid; and
- 14.6.2 the *cheque* must be forwarded to the payee immediately after completion (by the purchaser if the *cheque* relates only to the *property* or by the vendor in any other case).
- 14.7 If on completion the last bill for a water, sewerage or drainage usage charge is for a period ending before the *adjustment date*, the vendor is liable for an amount calculated by dividing the bill by the number of days in the period then multiplying by the number of unbilled days up to and including the *adjustment date*.
- 14.8 The vendor is liable for any amount recoverable for work started on or before the contract date on the *property* or any adjoining footpath or road.

## 15 Date for completion

The *parties* must complete by the date for completion and, if they do not, a *party* can *serve* a notice to complete if that *party* is otherwise entitled to do so.

**16 Completion****• Vendor**

- 16.1 On completion the vendor must give the purchaser any *document of title* that relates only to the *property*.
- 16.2 If on completion the vendor has possession or control of a *document of title* that relates also to other property, the vendor must produce it as and where necessary.
- 16.3 *Normally*, on completion the vendor must cause the legal title to the *property* (being an estate in fee simple) to pass to the purchaser free of any mortgage or other interest, subject to any necessary registration.
- 16.4 The legal title to the *property* does not pass before completion.
- 16.5 If the vendor gives the purchaser a document (other than the transfer) that needs to be lodged for registration, the vendor must pay the lodgement fee to the purchaser, plus another 20% of that fee.
- 16.6 If a *party* serves a land tax certificate showing a charge on any of the land, on completion the vendor must give the purchaser a land tax certificate showing the charge is no longer effective against the land.

**• Purchaser**

- 16.7 On completion the purchaser must pay to the vendor, by cash (up to \$2,000) or *settlement cheque* –
- 16.7.1 the price less any:
- deposit paid;
  - *remittance amount* payable;
  - *RW payment*; and
  - amount payable by the vendor to the purchaser under this contract; and
- 16.7.2 any other amount payable by the purchaser under this contract.
- 16.8 If the vendor requires more than 5 *settlement cheques*, the vendor must pay \$10 for each extra *cheque*.
- 16.9 If any of the deposit is not covered by a bond or guarantee, on completion the purchaser must give the vendor an order signed by the purchaser authorising the *depositholder* to account to the vendor for the deposit.
- 16.10 On completion the deposit belongs to the vendor.

**• Place for completion**

- 16.11 *Normally*, the *parties* must complete at the completion address, which is –
- 16.11.1 if a special completion address is stated in this contract - that address; or
- 16.11.2 if none is stated, but a first mortgagee is disclosed in this contract and the mortgagee would usually discharge the mortgage at a particular place - that place; or
- 16.11.3 in any other case - the vendor's *solicitor's* address stated in this contract.
- 16.12 The vendor by reasonable notice can require completion at another place, if it is in NSW, but the vendor must pay the purchaser's additional expenses, including any agency or mortgagee fee.
- 16.13 If the purchaser requests completion at a place that is not the completion address, and the vendor agrees, the purchaser must pay the vendor's additional expenses, including any agency or mortgagee fee.

**17 Possession**

- 17.1 *Normally*, the vendor must give the purchaser vacant possession of the *property* on completion.
- 17.2 The vendor does not have to give vacant possession if –
- 17.2.1 this contract says that the sale is subject to existing tenancies; and
- 17.2.2 the contract discloses the provisions of the tenancy (for example, by attaching a copy of the lease and any relevant memorandum or variation).
- 17.3 *Normally*, the purchaser can claim compensation (before or after completion) or *rescind* if any of the land is affected by a protected tenancy (a tenancy affected by Part 2, 3, 4 or 5 Landlord and Tenant (Amendment) Act 1948).

**18 Possession before completion**

- 18.1 This clause applies only if the vendor gives the purchaser possession of the *property* before completion.
- 18.2 The purchaser must not before completion –
- 18.2.1 let or part with possession of any of the *property*;
- 18.2.2 make any change or structural alteration or addition to the *property*; or
- 18.2.3 contravene any agreement between the *parties* or any direction, document, *legislation*, notice or order affecting the *property*.
- 18.3 The purchaser must until completion –
- 18.3.1 keep the *property* in good condition and repair having regard to its condition at the giving of possession; and
- 18.3.2 allow the vendor or the vendor's authorised representative to enter and inspect it at all reasonable times.
- 18.4 The risk as to damage to the *property* passes to the purchaser immediately after the purchaser enters into possession.
- 18.5 If the purchaser does not comply with this clause, then without affecting any other right of the vendor –
- 18.5.1 the vendor can before completion, without notice, remedy the non-compliance; and

18.5.2 if the vendor pays the expense of doing this, the purchaser must pay it to the vendor with interest at the rate prescribed under s101 Civil Procedure Act 2005.

18.6 If this contract is *rescinded* or *terminated* the purchaser must immediately vacate the *property*.

18.7 If the *parties* or their *solicitors* on their behalf do not agree in writing to a fee or rent, none is payable.

## 19 Rescission of contract

19.1 If this contract expressly gives a *party* a right to *rescind*, the *party* can exercise the right –

19.1.1 only by *servicing* a notice before completion; and

19.1.2 in spite of any making of a claim or *requisition*, any attempt to satisfy a claim or *requisition*, any arbitration, litigation, mediation or negotiation or any giving or taking of possession.

19.2 *Normally*, if a *party* exercises a right to *rescind* expressly given by this contract or any *legislation* –

19.2.1 the deposit and any other money paid by the purchaser under this contract must be refunded;

19.2.2 a *party* can claim for a reasonable adjustment if the purchaser has been in possession;

19.2.3 a *party* can claim for damages, costs or expenses arising out of a breach of this contract; and

19.2.4 a *party* will not otherwise be liable to pay the other *party* any damages, costs or expenses.

## 20 Miscellaneous

20.1 The *parties* acknowledge that anything stated in this contract to be attached was attached to this contract by the vendor before the purchaser signed it and is part of this contract.

20.2 Anything attached to this contract is part of this contract.

20.3 An area, bearing or dimension in this contract is only approximate.

20.4 If a *party* consists of 2 or more persons, this contract benefits and binds them separately and together.

20.5 A *party's solicitor* can receive any amount payable to the *party* under this contract or direct in writing that it is to be paid to another person.

20.6 A document under or relating to this contract is –

20.6.1 signed by a *party* if it is signed by the *party* or the *party's solicitor* (apart from a direction under clause 4.3);

20.6.2 *served* if it is *served* by the *party* or the *party's solicitor*;

20.6.3 *served* if it is *served* on the *party's solicitor*, even if the *party* has died or any of them has died;

20.6.4 *served* if it is *served* in any manner provided in s170 of the Conveyancing Act 1919;

20.6.5 *served* if it is sent by email or fax to the *party's solicitor*, unless in either case it is not received;

20.6.6 *served* on a person if it (or a copy of it) comes into the possession of the person; and

20.6.7 *served* at the earliest time it is *served*, if it is *served* more than once.

20.7 An obligation to pay an expense of another *party* of doing something is an obligation to pay –

20.7.1 if the *party* does the thing personally - the reasonable cost of getting someone else to do it; or

20.7.2 if the *party* pays someone else to do the thing - the amount paid, to the extent it is reasonable.

20.8 Rights under clauses 11, 13, 14, 17, 24, 30 and 31 continue after completion, whether or not other rights continue.

20.9 The vendor does not promise, represent or state that the purchaser has any cooling off rights.

20.10 The vendor does not promise, represent or state that any attached survey report is accurate or current.

20.11 A reference to any *legislation* (including any percentage or rate specified in *legislation*) is also a reference to any corresponding later *legislation*.

20.12 Each *party* must do whatever is necessary after completion to carry out the *party's* obligations under this contract.

20.13 Neither taking possession nor *servicing* a transfer of itself implies acceptance of the *property* or the title.

20.14 The details and information provided in this contract (for example, on pages 1 - 3) are, to the extent of each *party's* knowledge, true, and are part of this contract.

20.15 Where this contract provides for choices, a choice in BLOCK CAPITALS applies unless a different choice is marked.

## 21 Time limits in these provisions

21.1 If the time for something to be done or to happen is not stated in these provisions, it is a reasonable time.

21.2 If there are conflicting times for something to be done or to happen, the latest of those times applies.

21.3 The time for one thing to be done or to happen does not extend the time for another thing to be done or to happen.

21.4 If the time for something to be done or to happen is the 29th, 30th or 31st day of a month, and the day does not exist, the time is instead the last day of the month.

21.5 If the time for something to be done or to happen is a day that is not a *business day*, the time is extended to the next *business day*, except in the case of clauses 2 and 3.2.

21.6 *Normally*, the time by which something must be done is fixed but not essential.

## 22 Foreign Acquisitions and Takeovers Act 1975

22.1 The purchaser promises that the Commonwealth Treasurer cannot prohibit and has not prohibited the transfer under the Foreign Acquisitions and Takeovers Act 1975.

22.2 This promise is essential and a breach of it entitles the vendor to *terminate*.

## 23 Strata or community title

### • Definitions and modifications

- 23.1 This clause applies only if the land (or part of it) is a lot in a strata, neighbourhood, precinct or community scheme (or on completion is to be a lot in a scheme of that kind).
- 23.2 In this contract –
- 23.2.1 'change', in relation to a scheme, means –
- a registered or registrable change from by-laws set out in this contract;
  - a change from a development or management contract or statement set out in this contract; or
  - a change in the boundaries of common property;
- 23.2.2 'common property' includes association property for the scheme or any higher scheme;
- 23.2.3 'contribution' includes an amount payable under a by-law;
- 23.2.4 'information certificate' includes a certificate under s184 Strata Schemes Management Act 2015 and s26 Community Land Management Act 1989;
- 23.2.5 'information notice' includes a strata information notice under s22 Strata Schemes Management Act 2015 and a notice under s47 Community Land Management Act 1989;
- 23.2.6 'normal expenses', in relation to an owners corporation for a scheme, means normal operating expenses usually payable from the administrative fund of an owners corporation for a scheme of the same kind;
- 23.2.7 'owners corporation' means the owners corporation or the association for the scheme or any higher scheme;
- 23.2.8 'the *property*' includes any interest in common property for the scheme associated with the lot; and
- 23.2.9 'special expenses', in relation to an owners corporation, means its actual, contingent or expected expenses, except to the extent they are –
- normal expenses;
  - due to fair wear and tear;
  - disclosed in this contract; or
  - covered by moneys held in the capital works fund.
- 23.3 Clauses 11, 14.8 and 18.4 do not apply to an obligation of the owners corporation, or to property insurable by it.
- 23.4 Clauses 14.4.2 and 14.5 apply but on a unit entitlement basis instead of an area basis.
- ### • Adjustments and liability for expenses
- 23.5 The *parties* must adjust under clause 14.1 –
- 23.5.1 a regular periodic contribution;
- 23.5.2 a contribution which is not a regular periodic contribution but is disclosed in this contract; and
- 23.5.3 on a unit entitlement basis, any amount paid by the vendor for a normal expense of the owners corporation to the extent the owners corporation has not paid the amount to the vendor.
- 23.6 If a contribution is not a regular periodic contribution and is not disclosed in this contract –
- 23.6.1 the vendor is liable for it if it was determined on or before the contract date, even if it is payable by instalments; and
- 23.6.2 the purchaser is liable for all contributions determined after the contract date.
- 23.7 The vendor must pay or allow to the purchaser on completion the amount of any unpaid contributions for which the vendor is liable under clause 23.6.1.
- 23.8 *Normally*, the purchaser cannot make a claim or *requisition* or *rescind* or *terminate* in respect of –
- 23.8.1 an existing or future actual, contingent or expected expense of the owners corporation;
- 23.8.2 a proportional unit entitlement of the lot or a relevant lot or former lot, apart from a claim under clause 6; or
- 23.8.3 a past or future change in the scheme or a higher scheme.
- 23.9 However, the purchaser can *rescind* if –
- 23.9.1 the special expenses of the owners corporation at the later of the contract date and the creation of the owners corporation when calculated on a unit entitlement basis (and, if more than one lot or a higher scheme is involved, added together), less any contribution paid by the vendor, are more than 1% of the price;
- 23.9.2 in the case of the lot or a relevant lot or former lot in a higher scheme –
- a proportional unit entitlement for the lot is not disclosed in this contract; or
  - a proportional unit entitlement for the lot is disclosed in this contract but the lot has a different proportional unit entitlement at the contract date or at any time before completion;
- 23.9.3 a change before the contract date or before completion in the scheme or a higher scheme substantially disadvantages the purchaser and is not disclosed in this contract; or

23.9.4 a resolution is passed by the owners corporation before the contract date or before completion to give a strata renewal plan to the owners in the scheme for their consideration and there is not attached to this contract a strata renewal proposal or the strata renewal plan.

• **Notices, certificates and inspections**

- 23.10 The purchaser must give the vendor 2 copies of an information notice addressed to the owners corporation and signed by the purchaser.
- 23.11 The vendor must complete and sign 1 copy of the notice and give it to the purchaser on completion.
- 23.12 Each *party* can sign and give the notice as agent for the other.
- 23.13 The vendor must *serve* an information certificate issued after the contract date in relation to the lot, the scheme or any higher scheme at least 7 days before the date for completion.
- 23.14 The purchaser does not have to complete earlier than 7 days after *service* of the certificate and clause 21.3 does not apply to this provision. On completion the purchaser must pay the vendor the prescribed fee for the certificate.
- 23.15 The vendor authorises the purchaser to apply for the purchaser's own certificate.
- 23.16 The vendor authorises the purchaser to apply for and make an inspection of any record or other document in the custody or control of the owners corporation or relating to the scheme or any higher scheme.

• **Meetings of the owners corporation**

- 23.17 If a general meeting of the owners corporation is convened before completion –
- 23.17.1 if the vendor receives notice of it, the vendor must immediately notify the purchaser of it; and
- 23.17.2 after the expiry of any cooling off period, the purchaser can require the vendor to appoint the purchaser (or the purchaser's nominee) to exercise any voting rights of the vendor in respect of the lot at the meeting.

**24 Tenancies**

- 24.1 If a tenant has not made a payment for a period preceding or current at the *adjustment date* –
- 24.1.1 for the purposes of clause 14.2, the amount is to be treated as if it were paid; and
- 24.1.2 the purchaser assigns the debt to the vendor on completion and will if required give a further assignment at the vendor's expense.
- 24.2 If a tenant has paid in advance of the *adjustment date* any periodic payment in addition to rent, it must be adjusted as if it were rent for the period to which it relates.
- 24.3 If the *property* is to be subject to a tenancy on completion or is subject to a tenancy on completion –
- 24.3.1 the vendor authorises the purchaser to have any accounting records relating to the tenancy inspected and audited and to have any other document relating to the tenancy inspected;
- 24.3.2 the vendor must *serve* any information about the tenancy reasonably requested by the purchaser before or after completion; and
- 24.3.3 *normally*, the purchaser can claim compensation (before or after completion) if –
- a disclosure statement required by the Retail Leases Act 1994 was not given when required;
  - such a statement contained information that was materially false or misleading;
  - a provision of the lease is not enforceable because of a non-disclosure in such a statement; or
  - the lease was entered into in contravention of the Retail Leases Act 1994.
- 24.4 If the *property* is subject to a tenancy on completion –
- 24.4.1 the vendor must allow or transfer –
- any remaining bond money or any other security against the tenant's default (to the extent the security is transferable);
  - any money in a fund established under the lease for a purpose and compensation for any money in the fund or interest earned by the fund that has been applied for any other purpose; and
  - any money paid by the tenant for a purpose that has not been applied for that purpose and compensation for any of the money that has been applied for any other purpose;
- 24.4.2 if the security is not transferable, each *party* must do everything reasonable to cause a replacement security to issue for the benefit of the purchaser and the vendor must hold the original security on trust for the benefit of the purchaser until the replacement security issues;
- 24.4.3 the vendor must give to the purchaser –
- a proper notice of the transfer (an attornment notice) addressed to the tenant;
  - any certificate given under the Retail Leases Act 1994 in relation to the tenancy;
  - a copy of any disclosure statement given under the Retail Leases Act 1994;
  - a copy of any document served on the tenant under the lease and written details of its service, if the document concerns the rights of the landlord or the tenant after completion; and
  - any document served by the tenant under the lease and written details of its service, if the document concerns the rights of the landlord or the tenant after completion;
- 24.4.4 the vendor must comply with any obligation to the tenant under the lease, to the extent it is to be complied with by completion; and

24.4.5 the purchaser must comply with any obligation to the tenant under the lease, to the extent that the obligation is disclosed in this contract and is to be complied with after completion.

## 25 Qualified title, limited title and old system title

- 25.1 This clause applies only if the land (or part of it) –
- 25.1.1 is under qualified, limited or old system title; or
- 25.1.2 on completion is to be under one of those titles.
- 25.2 The vendor must *serve* a proper abstract of title *within 7* days after the contract date.
- 25.3 If an abstract of title or part of an abstract of title is attached to this contract or has been lent by the vendor to the purchaser before the contract date, the abstract or part is *served* on the contract date.
- 25.4 An abstract of title can be or include a list of documents, events and facts arranged (apart from a will or codicil) in date order, if the list in respect of each document –
- 25.4.1 shows its date, general nature, names of parties and any registration number; and
- 25.4.2 has attached a legible photocopy of it or of an official or registration copy of it.
- 25.5 An abstract of title –
- 25.5.1 must start with a good root of title (if the good root of title must be at least 30 years old, this means 30 years old at the contract date);
- 25.5.2 in the case of a leasehold interest, must include an abstract of the lease and any higher lease;
- 25.5.3 *normally*, need not include a Crown grant; and
- 25.5.4 need not include anything evidenced by the Register kept under the Real Property Act 1900.
- 25.6 In the case of land under old system title –
- 25.6.1 in this contract 'transfer' means conveyance;
- 25.6.2 the purchaser does not have to *serve* the form of transfer until after the vendor has *served* a proper abstract of title; and
- 25.6.3 each vendor must give proper covenants for title as regards that vendor's interest.
- 25.7 In the case of land under limited title but not under qualified title –
- 25.7.1 *normally*, the abstract of title need not include any document which does not show the location, area or dimensions of the land (for example, by including a metes and bounds description or a plan of the land);
- 25.7.2 clause 25.7.1 does not apply to a document which is the good root of title; and
- 25.7.3 the vendor does not have to provide an abstract if this contract contains a delimitation plan (whether in registrable form or not).
- 25.8 The vendor must give a proper covenant to produce where relevant.
- 25.9 The vendor does not have to produce or covenant to produce a document that is not in the possession of the vendor or a mortgagee.
- 25.10 If the vendor is unable to produce an original document in the chain of title, the purchaser will accept a photocopy from the Registrar-General of the registration copy of that document.

## 26 Crown purchase money

- 26.1 This clause applies only if purchase money is payable to the Crown, whether or not due for payment.
- 26.2 The vendor is liable for the money, except to the extent this contract says the purchaser is liable for it.
- 26.3 To the extent the vendor is liable for it, the vendor is liable for any interest until completion.
- 26.4 To the extent the purchaser is liable for it, the *parties* must adjust any interest under clause 14.1.

## 27 Consent to transfer

- 27.1 This clause applies only if the land (or part of it) cannot be transferred without consent under *legislation* or a *planning agreement*.
- 27.2 The purchaser must properly complete and then *serve* the purchaser's part of an application for consent to transfer of the land (or part of it) *within 7* days after the contract date.
- 27.3 The vendor must apply for consent *within 7* days after *service* of the purchaser's part.
- 27.4 If consent is refused, either *party* can *rescind*.
- 27.5 If consent is given subject to one or more conditions that will substantially disadvantage a *party*, then that *party* can *rescind* *within 7* days after receipt by or *service* upon the *party* of written notice of the conditions.
- 27.6 If consent is not given or refused –
- 27.6.1 *within 42* days after the purchaser *serves* the purchaser's part of the application, the purchaser can *rescind*; or
- 27.6.2 *within 30* days after the application is made, either *party* can *rescind*.
- 27.7 Each period in clause 27.6 becomes 90 days if the land (or part of it) is –
- 27.7.1 under a *planning agreement*; or
- 27.7.2 in the Western Division.
- 27.8 If the land (or part of it) is described as a lot in an unregistered plan, each time in clause 27.6 becomes the later of the time and 35 days after creation of a separate folio for the lot.
- 27.9 The date for completion becomes the later of the date for completion and 14 days after *service* of the notice granting consent to transfer.



**28 Unregistered plan**

- 28.1 This clause applies only if some of the land is described as a lot in an unregistered plan.
- 28.2 The vendor must do everything reasonable to have the plan registered *within* 6 months after the contract date, with or without any minor alteration to the plan or any document to be lodged with the plan validly required or made under *legislation*.
- 28.3 If the plan is not registered *within* that time and in that manner –
- 28.3.1 the purchaser can *rescind*; and
- 28.3.2 the vendor can *rescind*, but only if the vendor has complied with clause 28.2 and with any *legislation* governing the rescission.
- 28.4 Either *party* can *serve* notice of the registration of the plan and every relevant lot and plan number.
- 28.5 The date for completion becomes the later of the date for completion and 21 days after *service* of the notice.
- 28.6 Clauses 28.2 and 28.3 apply to another plan that is to be registered before the plan is registered.

**29 Conditional contract**

- 29.1 This clause applies only if a provision says this contract or completion is conditional on an event.
- 29.2 If the time for the event to happen is not stated, the time is 42 days after the contract date.
- 29.3 If this contract says the provision is for the benefit of a *party*, then it benefits only that *party*.
- 29.4 if anything is necessary to make the event happen, each *party* must do whatever is reasonably necessary to cause the event to happen.
- 29.5 A *party* can *rescind* under this clause only if the *party* has substantially complied with clause 29.4.
- 29.6 If the event involves an approval and the approval is given subject to a condition that will substantially disadvantage a *party* who has the benefit of the provision, the *party* can *rescind within* 7 days after either *party* *serves* notice of the condition.
- 29.7 If the *parties* can lawfully complete without the event happening –
- 29.7.1 if the event does not happen *within* the time for it to happen, a *party* who has the benefit of the provision can *rescind within* 7 days after the end of that time;
- 29.7.2 if the event involves an approval and an application for the approval is refused, a *party* who has the benefit of the provision can *rescind within* 7 days after either *party* *serves* notice of the refusal; and
- 29.7.3 the date for completion becomes the later of the date for completion and 21 days after the earliest of –
- either *party* *serving* notice of the event happening;
  - every *party* who has the benefit of the provision *serving* notice waiving the provision; or
  - the end of the time for the event to happen.
- 29.8 If the *parties* cannot lawfully complete without the event happening –
- 29.8.1 if the event does not happen *within* the time for it to happen, either *party* can *rescind*;
- 29.8.2 if the event involves an approval and an application for the approval is refused, either *party* can *rescind*;
- 29.8.3 the date for completion becomes the later of the date for completion and 21 days after either *party* *serves* notice of the event happening.
- 29.9 A *party* cannot *rescind* under clauses 29.7 or 29.8 after the event happens.

**30 Electronic transaction**

- 30.1 This *Conveyancing Transaction* is to be conducted as an *electronic transaction* if –
- 30.1.1 this contract says that it is a proposed *electronic transaction*;
- 30.1.2 the parties otherwise agree that it is to be conducted as an *electronic transaction*; or
- 30.1.3 the *conveyancing rules* require it to be conducted as an *electronic transaction*.
- 30.2 However, this *Conveyancing Transaction* is not to be conducted as an *electronic transaction* –
- 30.2.1 if the land is not *electronically tradeable* or the transfer is not eligible to be lodged electronically; or
- 30.2.2 if, at any time after it has been agreed that it will be conducted as an *electronic transaction*, a *party* *serves* a notice that it will not be conducted as an *electronic transaction*.
- 30.3 If, because of clause 30.2.2, this *Conveyancing Transaction* is not to be conducted as an *electronic transaction* –
- 30.3.1 each *party* must –
- bear equally any disbursements or fees; and
  - otherwise bear that *party's* own costs;
- incurred because this *Conveyancing Transaction* was to be conducted as an *electronic transaction*; and
- 30.3.2 if a *party* has paid all of a disbursement or fee which, by reason of this clause, is to be borne equally by the *parties*, that amount must be adjusted under clause 14.2.

- 30.4 If this *Conveyancing Transaction* is to be conducted as an *electronic transaction* –
- 30.4.1 to the extent, but only to the extent, that any other provision of this contract is inconsistent with this clause, the provisions of this clause prevail;
- 30.4.2 *normally*, words and phrases used in this clause 30 (italicised and in Title Case, such as *Electronic Workspace* and *Lodgement Case*) have the same meaning which they have in the *participation rules*;
- 30.4.3 the *parties* must conduct the *electronic transaction* in accordance with the *participation rules* and the *ECNL*;
- 30.4.4 a *party* must pay the fees and charges payable by that *party* to the *ELNO* and the *Land Registry* as a result of this transaction being an *electronic transaction*;
- 30.4.5 any communication from one *party* to another *party* in the *Electronic Workspace* made –
- after the *effective date*; and
  - before the receipt of a notice given under clause 30.2.2;
- is taken to have been received by that *party* at the time determined by s13A of the *Electronic Transactions Act 2000*; and
- 30.4.6 a document which is an *electronic document* is served as soon as it is first *Digitally Signed* in the *Electronic Workspace* on behalf of the *party* required to serve it.
- 30.5 *Normally*, the vendor must *within 7 days* of the *effective date* –
- 30.5.1 create an *Electronic Workspace*;
- 30.5.2 *populate* the *Electronic Workspace* with *title data*, the date for completion and, if applicable, *mortgagee details*; and
- 30.5.3 invite the purchaser and any *discharging mortgagee* to the *Electronic Workspace*.
- 30.6 If the vendor has not created an *Electronic Workspace* in accordance with clause 30.5, the purchaser may create an *Electronic Workspace*. If the purchaser creates the *Electronic Workspace* the purchaser must –
- 30.6.1 *populate* the *Electronic Workspace* with *title data*;
- 30.6.2 create and *populate* an *electronic transfer*;
- 30.6.3 *populate* the *Electronic Workspace* with the date for completion and a nominated *completion time*; and
- 30.6.4 invite the vendor and any *incoming mortgagee* to join the *Electronic Workspace*.
- 30.7 *Normally*, *within 7 days* of receiving an invitation from the vendor to join the *Electronic Workspace*, the purchaser must –
- 30.7.1 join the *Electronic Workspace*;
- 30.7.2 create and *populate* an *electronic transfer*;
- 30.7.3 invite any *incoming mortgagee* to join the *Electronic Workspace*; and
- 30.7.4 *populate* the *Electronic Workspace* with a nominated *completion time*.
- 30.8 If the purchaser has created the *Electronic Workspace* the vendor must *within 7 days* of being invited to the *Electronic Workspace* –
- 30.8.1 join the *Electronic Workspace*;
- 30.8.2 *populate* the *Electronic Workspace* with *mortgagee details*, if applicable; and
- 30.8.3 invite any *discharging mortgagee* to join the *Electronic Workspace*.
- 30.9 To complete the financial settlement schedule in the *Electronic Workspace* –
- 30.9.1 the purchaser must provide the vendor with *adjustment figures* at least *2 business days* before the date for completion; and
- 30.9.2 the vendor must *populate* the *Electronic Workspace* with payment details at least *1 business day* before the date for completion.
- 30.10 At least *1 business day* before the date for completion, the *parties* must ensure that –
- 30.10.1 all *electronic documents* which a *party* must *Digitally Sign* to complete the *electronic transaction* are *populated* and *Digitally Signed*;
- 30.10.2 all certifications required by the *ECNL* are properly given; and
- 30.10.3 they do everything else in the *Electronic Workspace* which that *party* must do to enable the *electronic transaction* to proceed to completion.
- 30.11 If completion takes place in the *Electronic Workspace* –
- 30.11.1 payment electronically on completion of the price in accordance with clause 16.7 is taken to be payment by a single *settlement cheque*;
- 30.11.2 the completion address in clause 16.11 is the *Electronic Workspace*; and
- 30.11.3 clauses 13.13.2 to 13.13.4, 16.8, 16.12, 16.13 and 31.2.2 to 31.2.4 do not apply.
- 30.12 If the computer systems of any of the *Land Registry*, the *ELNO* or the Reserve Bank of Australia are inoperative for any reason at the *completion time* agreed by the *parties*, a failure to complete this contract for that reason is not a default under this contract on the part of either *party*.
- 30.13 If the *Electronic Workspace* allows the *parties* to choose whether financial settlement is to occur despite the computer systems of the *Land Registry* being inoperative for any reason at the *completion time* agreed by the *parties* –
- 30.13.1 *normally*, the *parties* must choose that financial settlement not occur; however

- 30.13.2 if both *parties* choose that financial settlement is to occur despite such failure and financial settlement occurs –
- all *electronic documents Digitally Signed* by the vendor, the *certificate of title* and any discharge of mortgage, withdrawal of caveat or other *electronic document* forming part of the *Lodgement Case* for the *electronic transaction* shall be taken to have been unconditionally and irrevocably delivered to the purchaser or the purchaser's mortgagee at the time of financial settlement together with the right to deal with the land comprised in the *certificate of title*; and
  - the vendor shall be taken to have no legal or equitable interest in the *property*.
- 30.14 A *party* who holds a *certificate of title* must act in accordance with any *Prescribed Requirement* in relation to the *certificate of title* but if there is no *Prescribed Requirement*, the vendor must *serve* the *certificate of title* after completion.
- 30.15 If the *parties* do not agree about the delivery before completion of one or more documents or things that cannot be delivered through the *Electronic Workspace*, the *party* required to deliver the documents or things –
- 30.15.1 holds them on completion in escrow for the benefit of; and
- 30.15.2 must immediately after completion deliver the documents or things to, or as directed by; the *party* entitled to them.
- 30.16 In this clause 30, these terms (in any form) mean –
- |                                 |   |
|---------------------------------|---|
| <i>adjustment figures</i>       | details of the adjustments to be made to the price under clause 14;   |
| <i>certificate of title</i>     | the paper duplicate of the folio of the register for the land which exists immediately prior to completion and, if more than one, refers to each such paper duplicate;  |
| <i>completion time</i>          | the time of day on the date for completion when the <i>electronic transaction</i> is to be settled;   |
| <i>conveyancing rules</i>       | the rules made under s12E of the Real Property Act 1900;  |
| <i>discharging mortgagee</i>    | any discharging mortgagee, chargee, covenant chargee or caveator whose provision of a <i>Digitally Signed</i> discharge of mortgage, discharge of charge or withdrawal of caveat is required in order for unencumbered title to the <i>property</i> to be transferred to the purchaser; |
| <i>ECNL</i>                     | the Electronic Conveyancing National Law (NSW);   |
| <i>effective date</i>           | the date on which the <i>Conveyancing Transaction</i> is agreed to be an <i>electronic transaction</i> under clause 30.1.2 or, if clauses 30.1.1 or 30.1.3 apply, the contract date;  |
| <i>electronic document</i>      | a dealing as defined in the Real Property Act 1900 which may be created and <i>Digitally Signed</i> in an <i>Electronic Workspace</i> ;   |
| <i>electronic transfer</i>      | a transfer of land under the Real Property Act 1900 for the <i>property</i> to be prepared and <i>Digitally Signed</i> in the <i>Electronic Workspace</i> established for the purposes of the <i>parties' Conveyancing Transaction</i> ;  |
| <i>electronic transaction</i>   | a <i>Conveyancing Transaction</i> to be conducted for the <i>parties</i> by their legal representatives as <i>Subscribers</i> using an <i>ELN</i> and in accordance with the <i>ECNL</i> and the <i>participation rules</i> ;   |
| <i>electronically tradeable</i> | a land title that is Electronically Tradeable as that term is defined in the <i>conveyancing rules</i> ;  |
| <i>incoming mortgagee</i>       | any mortgagee who is to provide finance to the purchaser on the security of the <i>property</i> and to enable the purchaser to pay the whole or part of the price;  |
| <i>mortgagee details</i>        | the details which a <i>party</i> to the <i>electronic transaction</i> must provide about any <i>discharging mortgagee</i> of the <i>property</i> as at completion;  |
| <i>participation rules</i>      | the participation rules as determined by the <i>ENCL</i> ;  |
| <i>populate</i>                 | to complete data fields in the <i>Electronic Workspace</i> ; and  |
| <i>title data</i>               | the details of the title to the <i>property</i> made available to the <i>Electronic Workspace</i> by the <i>Land Registry</i> .   |

### 31 Foreign Resident Capital Gains Withholding

- 31.1 This clause applies only if –
- 31.1.1 the sale is not an excluded transaction within the meaning of s14-215 of Schedule 1 to the *TA Act*; and
- 31.1.2 a *clearance certificate* in respect of every vendor is not attached to this contract.
- 31.2 The purchaser must –
- 31.2.1 at least 5 days before the date for completion, *serve* evidence of submission of a purchaser payment notification to the Australian Taxation Office by the purchaser or, if a direction under clause 4.3 has been *served*, by the transferee named in the transfer *served* with that direction;
- 31.2.2 produce on completion a *settlement cheque* for the *remittance amount* payable to the Deputy Commissioner of Taxation;
- 31.2.3 forward the *settlement cheque* to the payee immediately after completion; and

- 31.2.4      *serve* evidence of receipt of payment of the *remittance amount*.
- 31.3      The vendor cannot refuse to complete if the purchaser complies with clauses 31.2.1 and 31.2.2.
- 31.4      If the vendor *serves* any *clearance certificate* or *variation*, the purchaser does not have to complete earlier than 7 days after that *service* and clause 21.3 does not apply to this provision.
- 31.5      If the vendor *serves* in respect of every vendor either a *clearance certificate* or a *variation* to 0.00 percent, clauses 31.2 and 31.3 do not apply.

SHOP2 / 572 MILITARY ROAD MOSMAN NSW 2088

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## SECTION 66W CERTIFICATE

I, \_\_\_\_\_ of \_\_\_\_\_,  
, certify as follows:

1. I am a \_\_\_\_\_ currently admitted to practise in New South Wales;
2. I am giving this certificate in accordance with section 66W of the Conveyancing Act 1919 with reference to a contract for the sale of property at **SHOP2/572 MILITARY ROAD, Mosman NSW 2088**, from **Emma Catherine Lee** to \_\_\_\_\_ in order that there is no cooling off period in relation to that contract;
3. I do not act for **Emma Catherine Lee** and am not employed in the legal practice of a solicitor acting for **Emma Catherine Lee** nor am I a member or employee of a firm of which a solicitor acting for **Emma Catherine Lee** is a member or employee; and
4. I have explained to :
  - (a) The effect of the contract for the purchase of that property;
  - (b) The nature of this certificate; and
  - (c) The effect of giving this certificate to the vendor, i.e. that there is no cooling off period in relation to the contract.

Dated: \_\_\_\_\_

\_\_\_\_\_

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## SPECIAL CONDITIONS

These are the special conditions to the contract for the sale of land

**BETWEEN** Emma Catherine Lee (Vendor)

**AND** of (Purchaser)

### 32. Inconsistency with printed conditions

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If there is any inconsistency between the printed clauses and these additional provisions then these additional provisions shall prevail to the extent of any such inconsistency.

### 33. Amendments to printed form of Contract

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The following clauses in the printed form of contract shall be amended as follows:

- (a) In clause 2.9, delete words "If each party tells the *depositholder* that the deposit is to be invested" and replace them with, "The purchaser and vendor hereby authorize and direct that". Add in the end, "The purchaser must provide a valid TFN to the *depositholder* on exchange of contracts."
- (b) Delete clause 7.1.1.
- (c) Clause 7.1.3 is amended by substituting "7days" in place of "14days".
- (d) In clause 8.1, delete the words "on reasonable grounds".
- (e) Delete clause 8.2.
- (f) Delete first line of clause 10.1 and replace it with: "The purchaser cannot make a Requisition, delay completion, rescind, or terminate in respect of –  
"
- (g) In clause 12.2, delete the words "if necessary, in the name of the vendor"
- (h) In clause 16.5, delete the words "plus another 20% of that fee".
- (i) In clause 16.6, delete the words "If the purchaser serves" with: "If prior to 7 clear days of completion (time being of essence) the purchaser serves".
- (j) Clause 16.8 is deleted.
- (k) In clause 31, clause 31.1.2 to be deleted and replaced with: "a clearance certificate in respect of every vendor is not provided to the purchaser or its solicitor at least 14 days prior to completion."

### 34. Notice to complete

- (a) After the completion date, the vendor and the purchaser agree that the vendor shall be at liberty to issue a notice to complete to the purchaser requiring completion by the purchaser within a further period of 14 days, time being of the essence both at law and in equity as regards to
-

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the time stipulated in the said notice to complete and the purchaser acknowledges that this further period of 14 days is a reasonable period in which to complete the contract.

- (b) The purchaser must pay \$700.00 + GST to compensate the vendor for additional legal costs and other expenses incurred by the vendor in relation to the issue and service of that notice to complete. The vendor may refuse to complete the contract unless and until the purchaser has paid this amount.

### **35. Entire Agreement and severability**

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The purchaser acknowledges and agrees that the conditions contained herein constitute the entire agreement between the vendor and the purchaser. Each clause or part of a clause is severable from the remainder of this contract. If for any reason any clause or part of a clause is invalid or unenforceable the validity or enforceability of the remaining parts of the contract will not be prejudiced or in any other way affected.

### **36. Death or incapacity**

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Notwithstanding any rule of law or equity to the contrary, should either party, or if more than one any one of them, prior to completion die or become mentally ill, as defined in the Mental Health Act, or become bankrupt, or if a company go into liquidation, then either party may rescind this contract by notice in writing forwarded to the other party and thereupon this contract shall be at an end and the provisions of clause 19 hereof shall apply.

### **37. Purchaser acknowledgements**

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The purchaser acknowledges that they are purchasing the property:

- (a) In its present condition and state of repair;
- (b) Subject to all defects latent and patent;
- (c) Subject to any infestations and dilapidation;
- (d) Subject to all existing water, sewerage, drainage and plumbing services and connections in respect of the property; and
- (e) Subject to any non-compliance, that is disclosed herein, with the Local Government Act or any Ordinance under that Act in respect of any building on the land.

The purchaser agrees not to seek to, terminate rescind or make any objection requisition or claim for compensation arising out of any of the matters covered by this clause.

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### **38. Late completion**

In the event that completion is not effected on the nominated day due to the purchaser's default, the purchaser shall pay to the vendor on completion, in addition to the balance of the purchase price, 12% interest per annum calculated daily on the balance of the purchase price from the date nominated for completion until and including the actual day of completion, provided always that there shall be an abatement of interest during any time that the purchaser is ready, willing and able to complete and the vendor is not.

### **39. Agent**

The purchaser warrants that they were not introduced to the vendor or the property by or through the medium of any real estate agent or any employee of any real estate agent or any person having any connection with a real estate agent who may be entitled to claim commission as a result of this sale other than the vendors agent, if any, referred to in this contract, and the purchaser agrees that they will at all times indemnify and keep indemnified the vendor from and against any claim whatsoever for commission, which may be made by any real estate agent or other person arising out of or in connection with the purchasers breach of this warranty, and it is hereby agreed and declared that this clause shall not merge in the transfer upon completion, or be extinguished by completion of this contract, and shall continue in full force, and effect, notwithstanding completion.

### **40. Smoke alarms**

The property has smoke alarms installed.

### **41. NON-RELIANCE ON WARRANTIES/REPRESENTATIONS**

The purchaser acknowledges that the purchaser in entering into this contract:

41.1.1 does not rely on any warranty or representation made by the vendor or any person on behalf of the vendor except those are expressly provided in this contract; and

41.1.2 has relied entirely on the purchaser's enquiries relating to and in the purchaser's inspection of the property.

### **42. Swimming pool**

The property does not have a swimming pool.

### **43. BUILDING CERTIFICATE AND SURVEY**

#### **43.1 No Building Certificate**

(a) The purchaser acknowledges that the vendor does not hold a Building Certificate in relation to the property. The purchaser shall not require the vendor to make applications for a Building Certificate nor is

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completion of this contract condition upon either the issue or availability of such certificate.

- (b) Without limiting the operation of any other provision in this contract, the purchaser shall not make any Requisition nor shall the purchaser be entitled to rescind or terminate this contract nor delay completion as a result of or arising from:

- 
- (i) Any Building Certificate; or  
(ii) The failure by Council to issue any Building Certificate; or  
(iii) If the purchaser applies for a Building Certificate and:
- 
- (A) Council refuses to issue a Building Certificate or fails to issue or indicate its intention to issue a Building Certificate before the completion date; or  
(B) Council issues a building certificate upon conditions which are not acceptable to the purchaser; or  
(C) As a result of the purchaser's application for a Building Certificate, Council issues a work order requiring work to be done to the property.

#### **44. GOODS AND SERVICES TAX**

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- 44.1 The amount payable by the purchaser under this contract does not include any amount payable to the *New Tax System (Goods and Services Tax) Act 1999 (Cth)*, the *New Tax System (Goods and Services Tax Transition) Act 1999 (Cth)* or any cognate legislation (the GST Legislation).
- 44.2 If any amount (including any GST on adjustments) is or will become payable pursuant to the GST Legislation the purchaser shall be liable for that amount.
- 44.3 Payment or allowance of the amount of any liability for GST in accordance with this special condition is an essential term of this contract. The amount must be paid or allowed by the purchaser to the vendor on or before completion (or if liability is ascertained following completion, then on demand by the vendor) and in breach thereof interest will also be payable on the outstanding amount at the rate of 12% per annum. This special condition does not merge on completion.
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#### **45. GUARANTEE (CORPORATE PURCHASERS ONLY)**

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- 45.1 If the purchaser is a company (and not listed on any Australian Stock Exchange) then in consideration of the vendor entering into this contract the person named as guarantor below (Guarantor) irrevocably and unconditionally guarantees (and if more than one, guarantee jointly and severally) as a primary obligee and not merely as surety the due performance by the purchaser of its obligations under this contract and agrees to indemnify and keep indemnified the vendor against any claim which the vendor may sustain or incur as a result of the purchaser not performing all or any of its obligations under this contract.
- 45.2 The obligation of the Guarantor under this special condition shall not be limited, discharged, released, or otherwise affected by any time, release, compromise, forbearance, modification or invalidity or severance of this contract or any other indulgence granted by the vendor or any other person or by the vendor refraining to exercise any rights against the Guarantor under this contract.
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45.3 The purchaser and each Guarantor warrants that the Guarantors specified below are over the age of 18 years and are directors and/or substantial shareholders of the purchaser.

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Name of the Guarantor/s:

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Address of Guarantor/s:

#### **46. Deposit bond**

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- (a) The word bond means the deposit bond issued to the vendor at the request of the purchaser by the bond provider.
- (b) Subject to the following clauses the delivery of the bond on exchange to the person nominated in this contract to hold the deposit or the vendor's solicitor will be deemed to be payment of the deposit in accordance with this contract.
- (c) The purchaser must pay the amount stipulated in the bond to the vendor in cash or by unendorsed bank cheque on completion or at such other time as may be provided for the deposit to be accounted to the vendor.
- (d) If the vendor serves on the purchaser a written notice claiming to forfeit the deposit then to the extent that the amount has not already been paid by the bond provider under the bond, the purchaser must immediately pay the deposit or so much of the deposit as has not been paid to the person nominated in this contract to hold the deposit.

#### **47. Electronic Settlement**

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- (a) The parties agree to settle this sale electronically in accordance and compliance with the Electronic Conveyancing National Law.
  - (b) The provisions of this contract continue to apply as modified by the electronic settlement procedures unless for any reason a party notifies the other in writing that settlement can no longer be conducted electronically at which time the matter will proceed as a paper settlement. In this event any disbursements incurred will be shared equally by the parties and adjusted at settlement but each party shall pay their own costs.
  - (c) Within 7 days of exchange the vendor will open and populate the electronic workspace, including the date and time of settlement and invite the purchaser and any discharging mortgagee to join, failing which the purchaser may do so.
  - (d) Within 7 days of receipt of the invitation the purchaser must join and create an electronic transfer and invite any incoming mortgagee to join.
  - (e) Settlement takes place when the financial settlement takes place.
-

- 
- (f) Anything that cannot be delivered electronically must be given to the relevant party immediately following settlement.
  - (g) If time is of the essence of the transaction and settlement fails to proceed due to a system failure then neither party will be in default. If electronic settlement cannot be re-established the next working day the parties must settle in the usual non-electronic manner as soon as possible but no later than 3 working days after the initial electronic failure unless otherwise agreed.
  - (h) Any notice served on a party in the electronic workspace must also be served in accordance with the condition of this contract relating to service of notices.
-



FOLIO: 11/SP85065

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SEARCH DATE	TIME	EDITION NO	DATE
-----	----	-----	----
2/10/2019	5:20 PM	8	27/6/2019

LAND

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LOT 11 IN STRATA PLAN 85065  
AT MOSMAN  
LOCAL GOVERNMENT AREA MOSMAN

FIRST SCHEDULE

-----

EMMA CATHERINE LEE (CN AP345318)

SECOND SCHEDULE (2 NOTIFICATIONS)

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- 1 INTERESTS RECORDED ON REGISTER FOLIO CP/SP85065
- 2 AJ631952 LEASE TO LIMIN XU BEING SHOP 2, 572 MILITARY RD,  
MOSMAN NSW 2088. EXPIRES: 31/5/2020. OPTION OF  
RENEWAL: FIVE YEARS.

NOTATIONS

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UNREGISTERED DEALINGS: NIL

\*\*\* END OF SEARCH \*\*\*



FOLIO: CP/SP85065

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SEARCH DATE	TIME	EDITION NO	DATE
-----	----	-----	----
3/10/2019	8:42 AM	4	30/8/2019

LAND

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THE COMMON PROPERTY IN THE STRATA SCHEME BASED ON STRATA PLAN 85065  
WITHIN THE PARCEL SHOWN IN THE TITLE DIAGRAM

AT MOSMAN  
LOCAL GOVERNMENT AREA MOSMAN  
PARISH OF WILLOUGHBY COUNTY OF CUMBERLAND  
TITLE DIAGRAM SP85065

FIRST SCHEDULE

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THE OWNERS - STRATA PLAN NO. 85065  
ADDRESS FOR SERVICE OF DOCUMENTS:  
572-574 MILITARY ROAD  
MOSMAN NSW 2088

SECOND SCHEDULE (5 NOTIFICATIONS)

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- 1 RESERVATIONS AND CONDITIONS IN THE CROWN GRANT(S)
- 2 AF931658 POSITIVE COVENANT
- 3 AF931659 RESTRICTION(S) ON THE USE OF LAND
- 4 AP497067 CONSOLIDATION OF REGISTERED BY-LAWS
- 5 AP497067 INITIAL PERIOD EXPIRED

SCHEDULE OF UNIT ENTITLEMENT (AGGREGATE: 100)

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STRATA PLAN 85065

LOT	ENT	LOT	ENT	LOT	ENT	LOT	ENT
1	- 9	2	- 7	3	- 9	4	- 9
5	- 6	6	- SP85347	7	- 11	8	- 14
9	- 13	10	- SP85347	11	- 5		

STRATA PLAN 85347

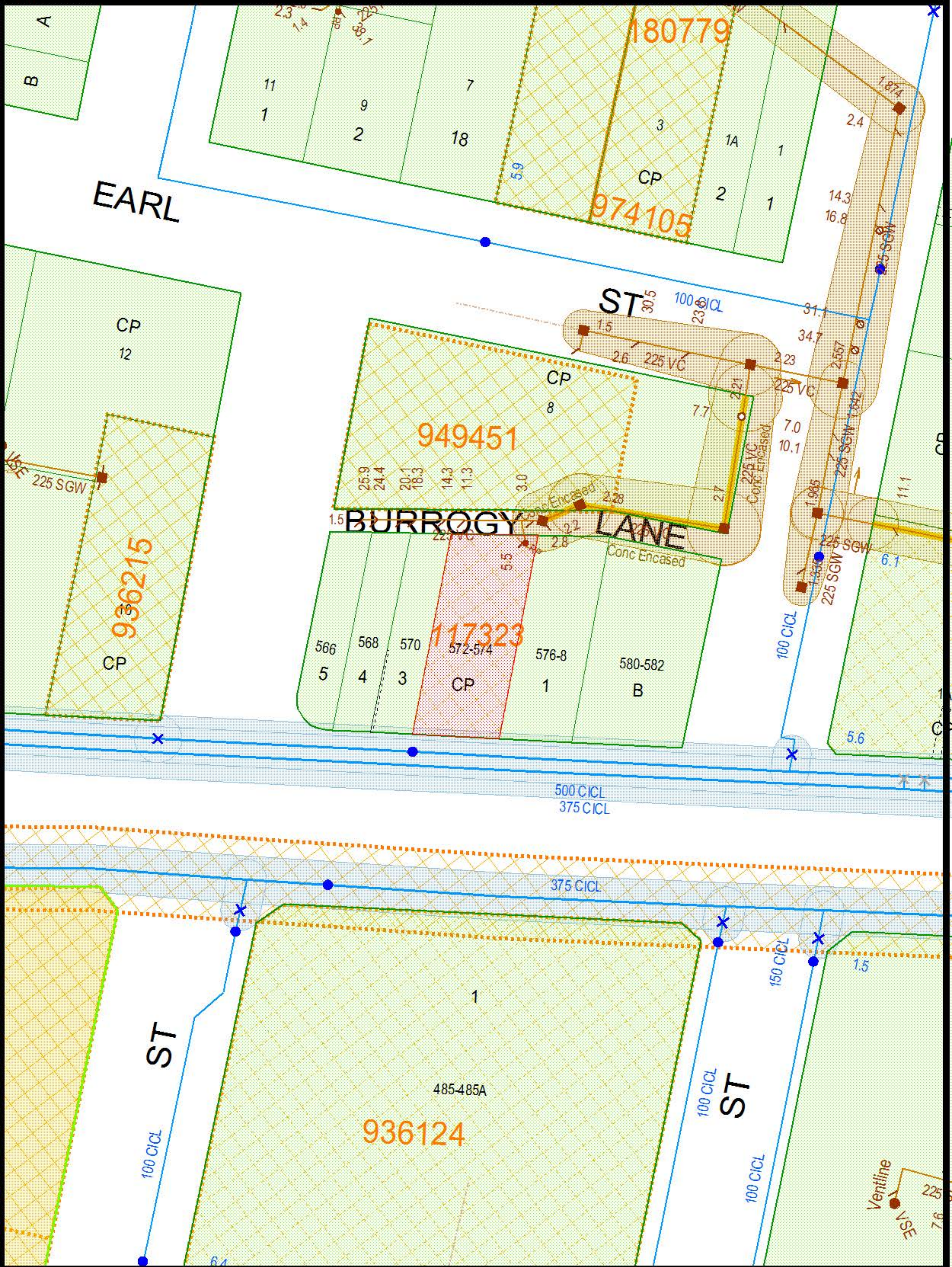
LOT	ENT	LOT	ENT
12	- 10	13	- 7

NOTATIONS

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UNREGISTERED DEALINGS: NIL

\*\*\* END OF SEARCH \*\*\*



NOTE This diagram only indicates availability of a sewer and any sewerage service shown as existing in Sydney Water's records. The existence and position of Sydney Water's sewers, stormwater channels, pipes, mains and structures should be ascertained by inspection of maps available at any of Sydney Water's Customer Centres. Position of structures, boundaries, sewers and sewerage services shown hereon are approximately only.

# DIAGRAM OF SANITARY DRAINAGE

Municipality of *Mosman* SEWER AVAILABLE

Diagram No. *280462*

### SYMBOLS AND ABBREVIATIONS

- ⊠ Boundary Trap
- Pit
- ⊠ Grease Interceptor
- ⊠ Gully
- ⊠ P.T. P. Trap
- ⊠ RS Reflux Sink

- RV. Reflux Valve
- VERT. Vertical Pipe
- V.P. Vent. Pipe
- S.V.P. Soil Vent. Pipe
- D.C.C. Down Cast Cowl

- I.P. Induct Pipe
- M.F. Mica Flap
- T Tubs
- K.S. Kitchen Sink
- W.C. Water Closet
- B.W. Bath Waste

- Bsn. Basin
- Shr. Shower
- W.I.P. Wrought Iron Pipe
- C.I.P. Cast Iron Pipe
- F.W. Floor Waste
- W.M. Washing Machine

Existing drainage shown by black lines      Scale: 40 Feet to an inch

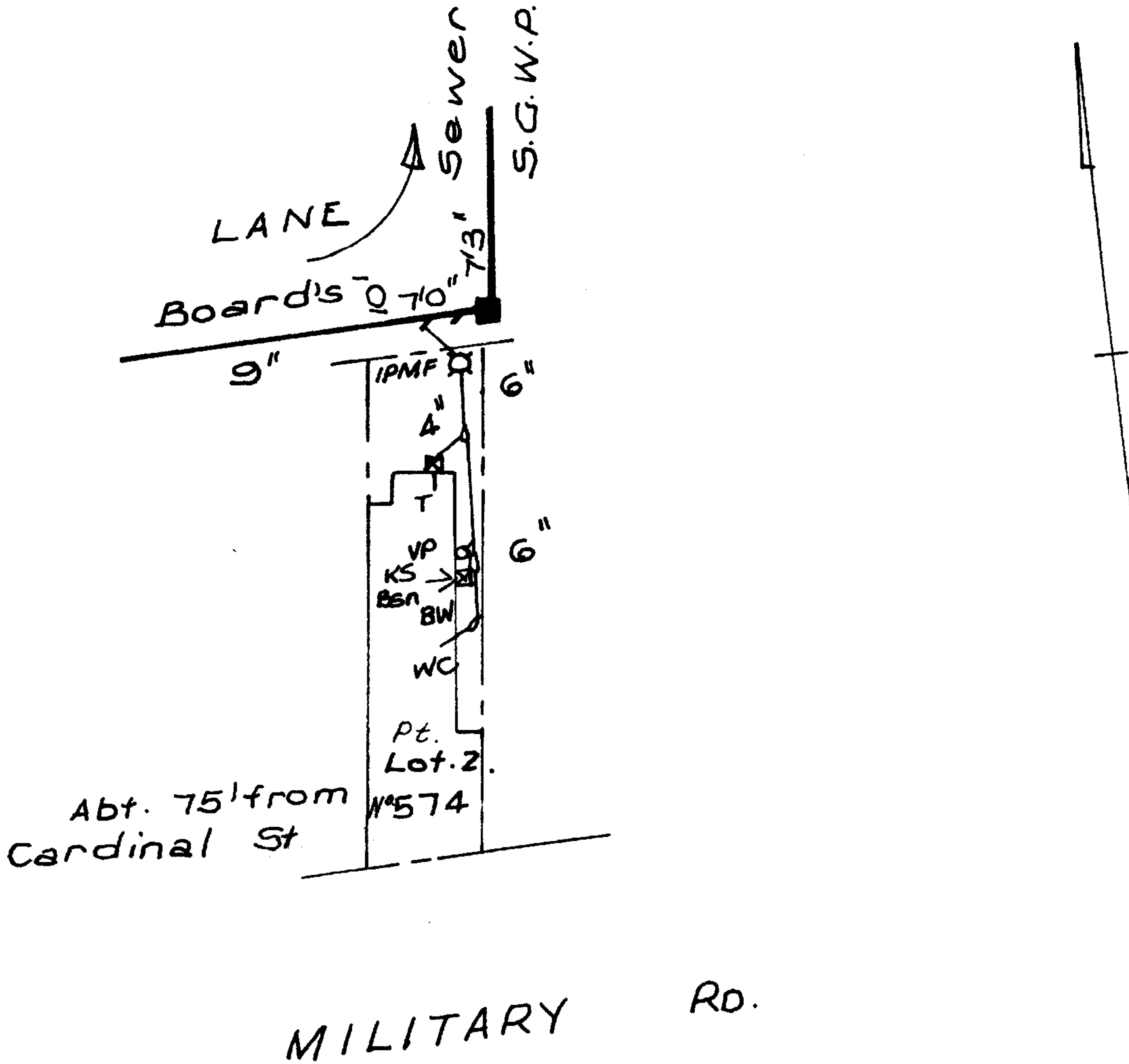
Proposed new drainage shown by full blue lines.

*This diagram is the property of the Owner and is to be returned to him on completion of the work.*

Subject to application, certificates for drainage and sanitary plumbing will be issued to the owner when the work is completed and passed by the Board's Inspector.

*The Board accepts no responsibility for the suitability of the diagram in relation to the eventual position of the Board's sewer when the sewer becomes available it will be necessary to apply for a revised diagram.*

This work must be carried out in accordance with the Board's By-laws.



SHEET No. *2638*

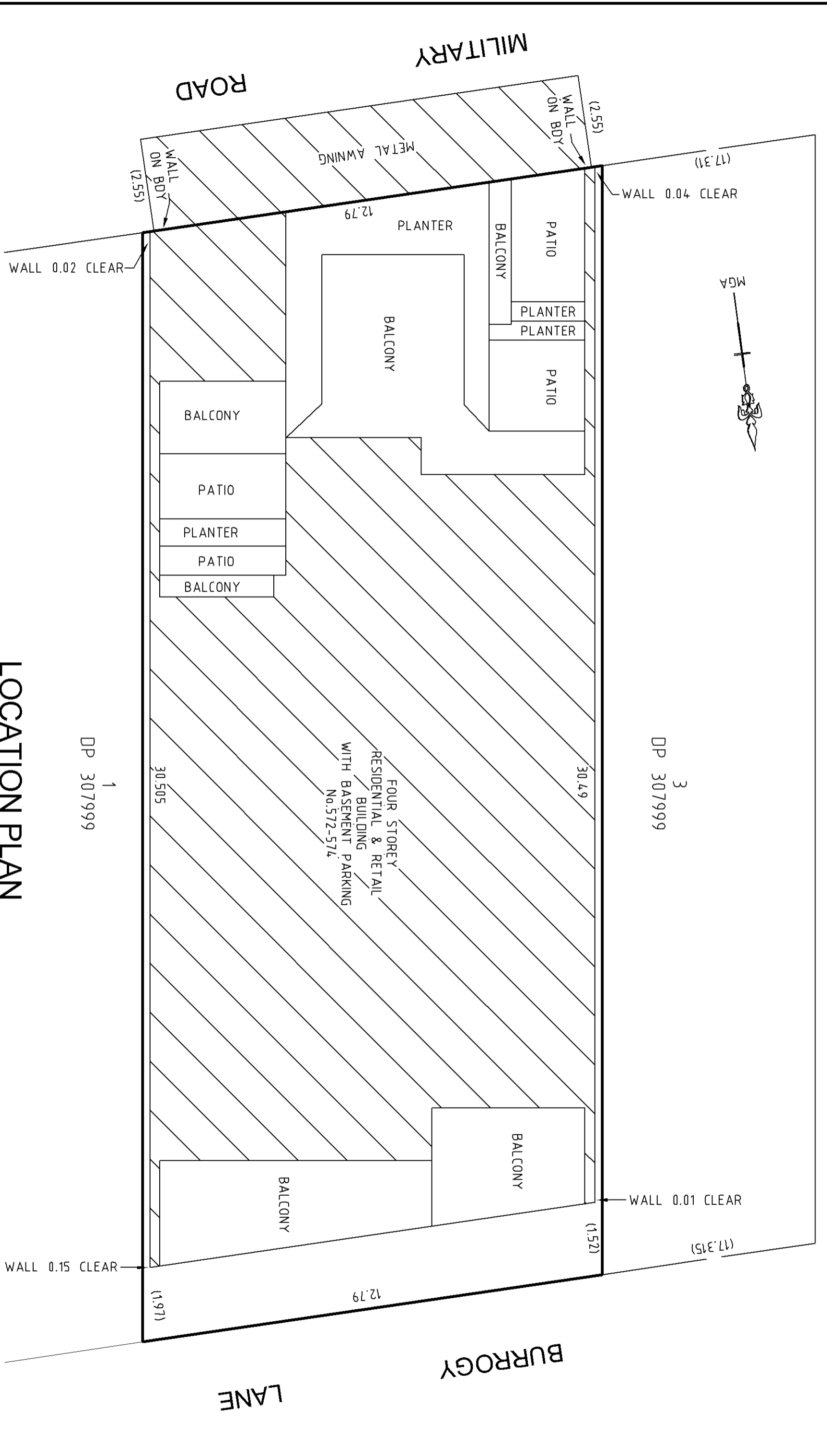
..... 19 .....  
FOR ENGINEER-IN-CHIEF

OFFICE USE ONLY							
..... W.C	Designed by	DATE	Inspector	FIRST VISIT	SUPERV'SN	PASSED	DATE
..... Bth		/ /		/ /	/ /	/ /	/ /
..... Shr	Inspector		Date	Inspector .....			
..... Bsn			Outfall	Checked	/ /		
..... K.S	Examined by	/ /	HL	491 414			
..... T			LL				
..... Plg	Chief Inspector		Drainer				
..... Dge. Int.			Boundary Trap	is <del>not</del> required.			
..... Dge. Ext	DESIGN						

NOTE This diagram only indicates availability of a sewer and any sewerage service shown as existing in Sydney Water's records. The existence and position of Sydney Water's sewers, stormwater channels, pipes, mains and structures should be ascertained by inspection of maps available at any of Sydney Water's Customer Centres. Position of structures, boundaries, sewers and sewerage services shown hereon are approximately only.

CARDINAL STREET

STREET



FOUR STOREY  
RESIDENTIAL & RETAIL  
BUILDING  
WITH BASEMENT PARKING  
No.572-574

**LOCATION PLAN**

DP 1  
307999

DP 3  
307999

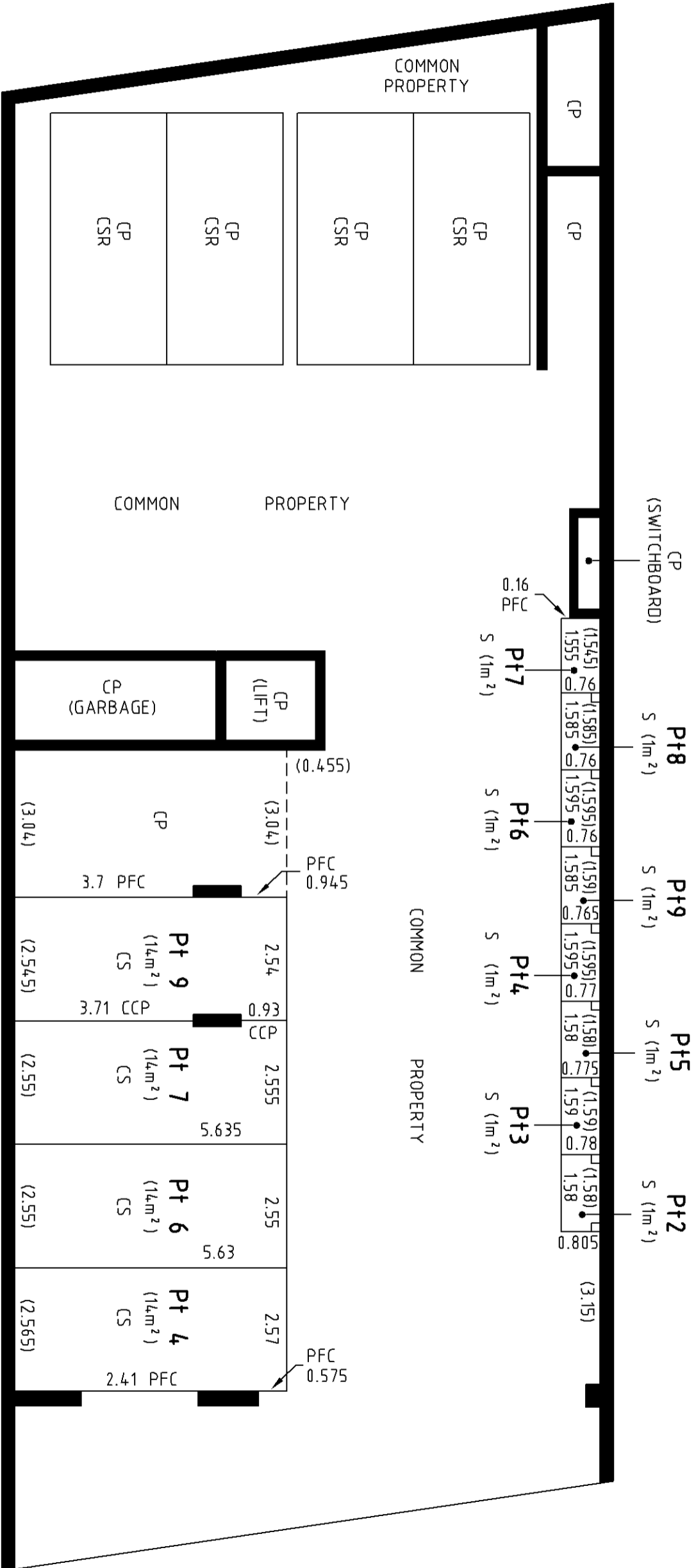
10	20	30	40	50	60	70	80	90	100	110	120	130	140	150
Table of mm														

Surveyor: ADAM DIRK OCHTMAN VEERSEMA  
 Surveyor's Ref: 1045E  
 Subdivision No: S002/11  
 Lengths are in metres. Reduction Ratio 1: 100

Registered  
  
 11.3.2011

**SP85065**





## BASEMENT

- DENOTES RIGHT ANGLE
- DENOTES CARSPACE
- DENOTES COMMON PROPERTY
- DENOTES CAR STACKER
- DENOTES STORAGE

- DENOTES PROLONGATION FACE OF COLUMN OR WALL
- DENOTES CENTRE OF COLUMN PRODUCED

### NOTES:

AREAS ARE APPROXIMATE AND ARE FOR THE PURPOSES OF THE STRATA SCHEMES (FREEHOLD DEVELOPMENT) ACT, 1973.

NOT ALL COLUMNS ARE SHOWN.

10	20	30	40	50	60	70	80	90	100	110	120	130	140	150
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Table of mm

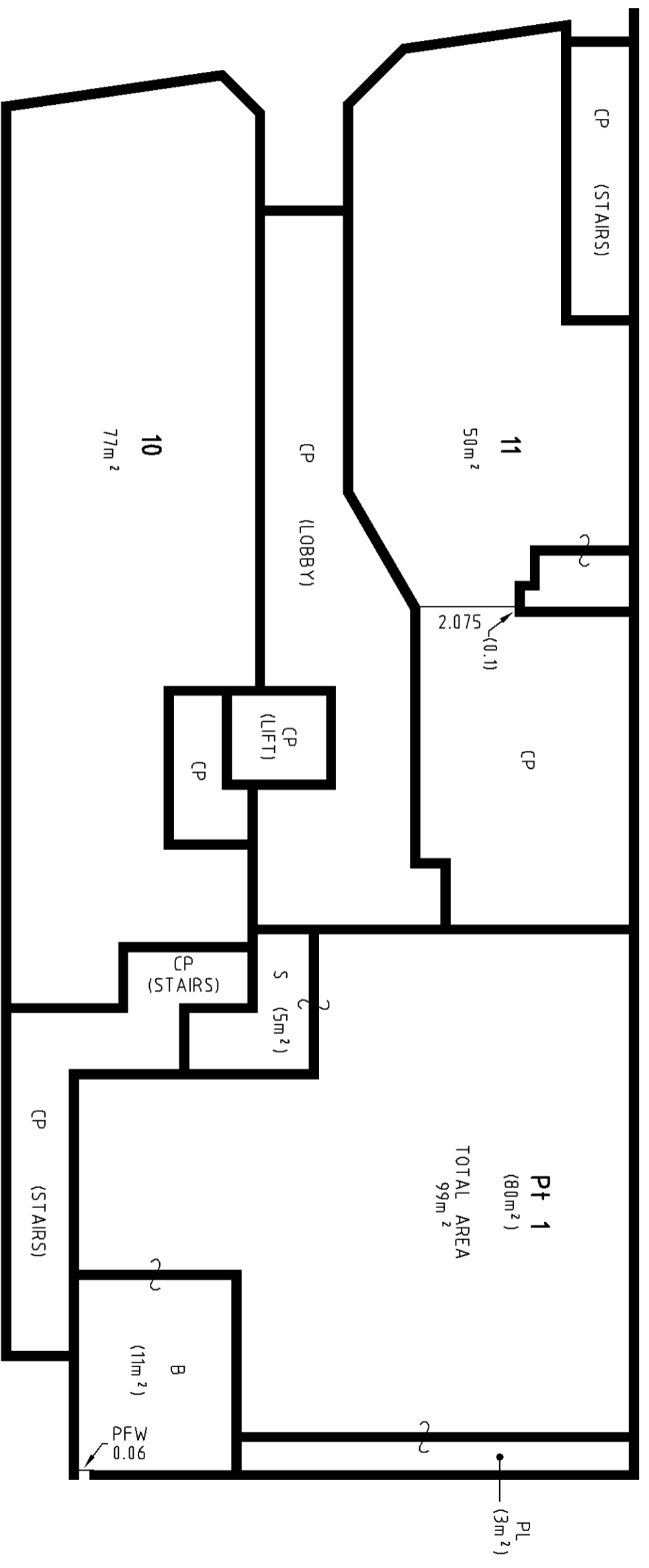
Surveyor: ADAM DIRK OCHTMAN VEERSEMA  
 Surveyor's Ref: 1045E  
 Subdivision No: S002/11  
 Lengths are in metres. Reduction Ratio 1: 100

Registered



11.3.2011

# SP85065



**GROUND LEVEL**

NOTES:  
 AREAS ARE APPROXIMATE AND ARE FOR THE PURPOSES OF THE STRATA SCHEMES (FREEHOLD DEVELOPMENT) ACT, 1973.  
 BALCONY AND PLANTER AREAS ARE LIMITED IN HEIGHT TO 3 METRES ABOVE THE UPPER SURFACE OF THEIR RESPECTIVE UNITS SLAB LEVEL EXCEPT WHERE COVERED.

- B DENOTES BALCONY
- CP DENOTES COMMON PROPERTY
- PL DENOTES PLANTER
- S DENOTES STORAGE
- PFW DENOTES PROLONGATION FACE OF WALL

10	20	30	40	50	60	70	80	90	100	110	120	130	140	150
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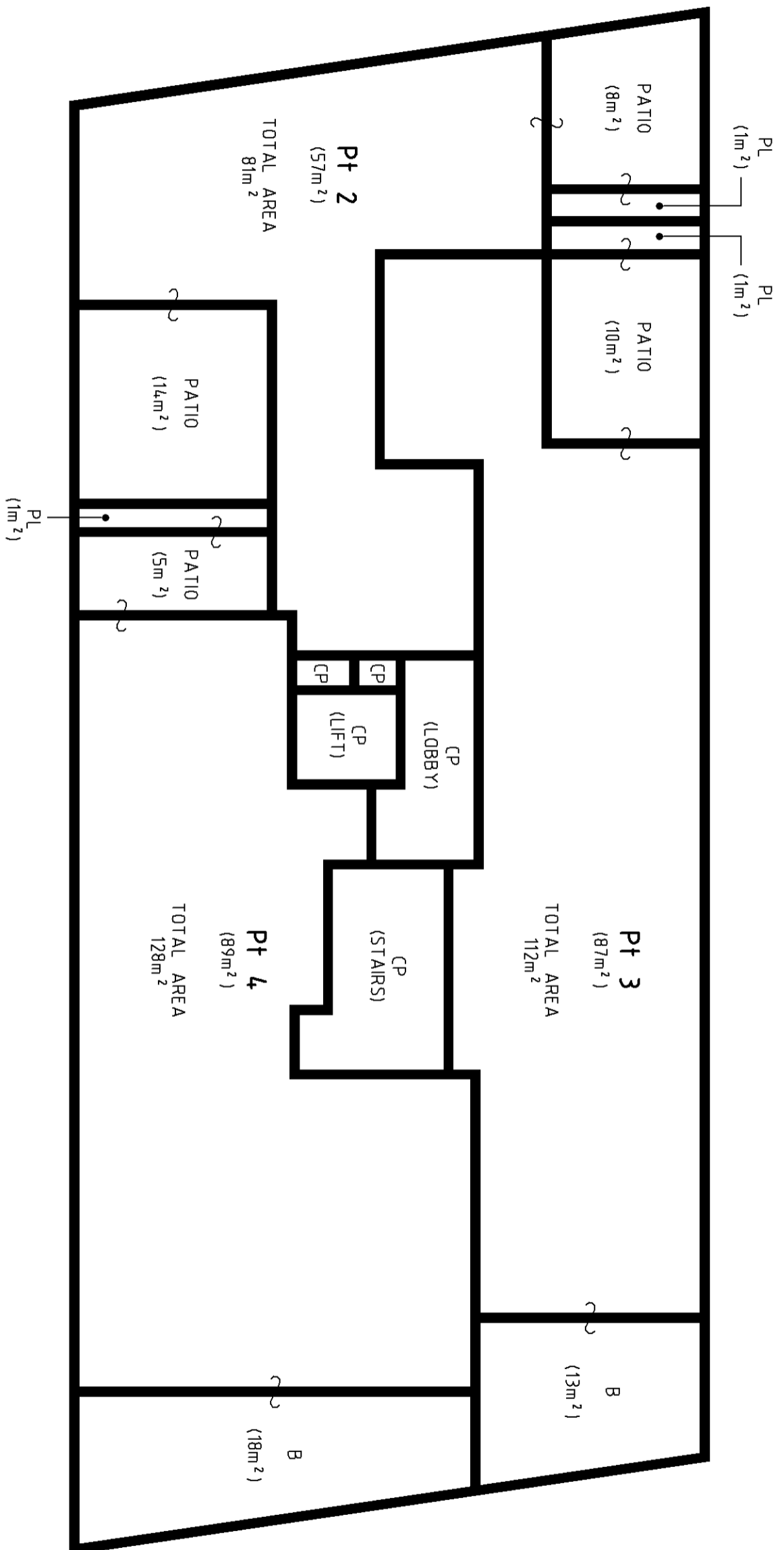
Table of mm

Surveyor: ADAM DIRK OCHTMAN VEERSEMA  
 Surveyor's Ref: 1045E  
 Subdivision No: S002/11  
 Lengths are in metres. Reduction Ratio 1: 100

Registered  
 11.3.2011



**SP85065**



NOTES:

AREAS ARE APPROXIMATE AND ARE FOR THE PURPOSES OF THE STRATA SCHEMES (FREEHOLD DEVELOPMENT) ACT, 1973.

BALCONIES, PATIOS AND PLANTER AREAS ARE LIMITED IN HEIGHT TO 3 METRES ABOVE THE UPPER SURFACE OF THEIR RESPECTIVE UNITS SLAB LEVEL EXCEPT WHERE COVERED.

**LEVEL 1**

B DENOTES BALCONY  
 CP DENOTES COMMON PROPERTY  
 PL DENOTES PLANTER

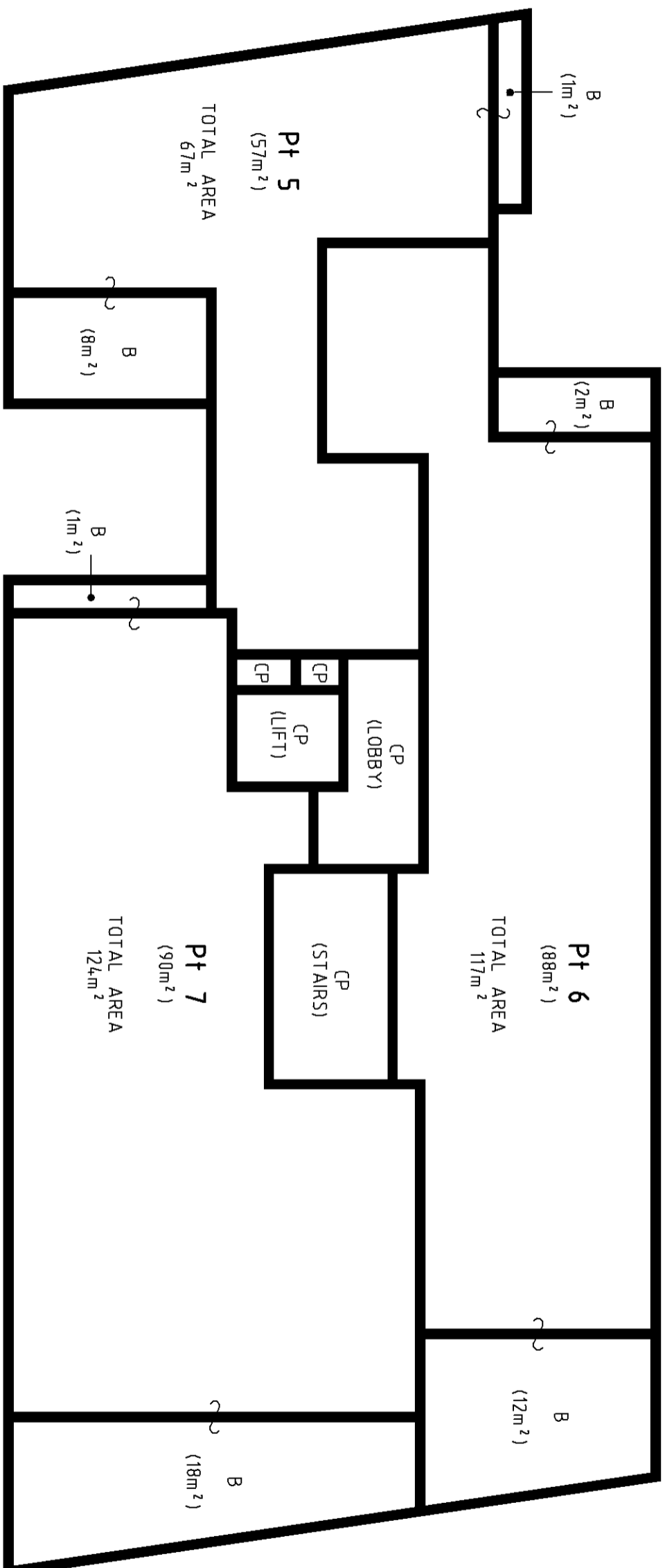
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Table of mm

Surveyor: ADAM DIRK OCHTMANVEERSEMA  
 Surveyor's Ref: 1045E  
 Subdivision No: S002/11  
 Lengths are in metres. Reduction Ratio 1: 100

Registered  
 11.3.2011

**SP85065**



**LEVEL 2**

B DENOTES BALCONY  
CP DENOTES COMMON PROPERTY

NOTES:

AREAS ARE APPROXIMATE AND ARE FOR THE PURPOSES OF THE STRATA SCHEMES (FREEHOLD DEVELOPMENT) ACT, 1973. BALCONIES ARE LIMITED IN HEIGHT TO 3 METRES ABOVE THE UPPER SURFACE OF THEIR RESPECTIVE UNITS SLAB LEVEL EXCEPT WHERE COVERED.

Surveyor: ADAM DIRK OCHTMANVEERSEMA

Surveyor's Ref: 1045E

Subdivision No: S002/11

Lengths are in metres. Reduction Ratio 1: 100

Registered

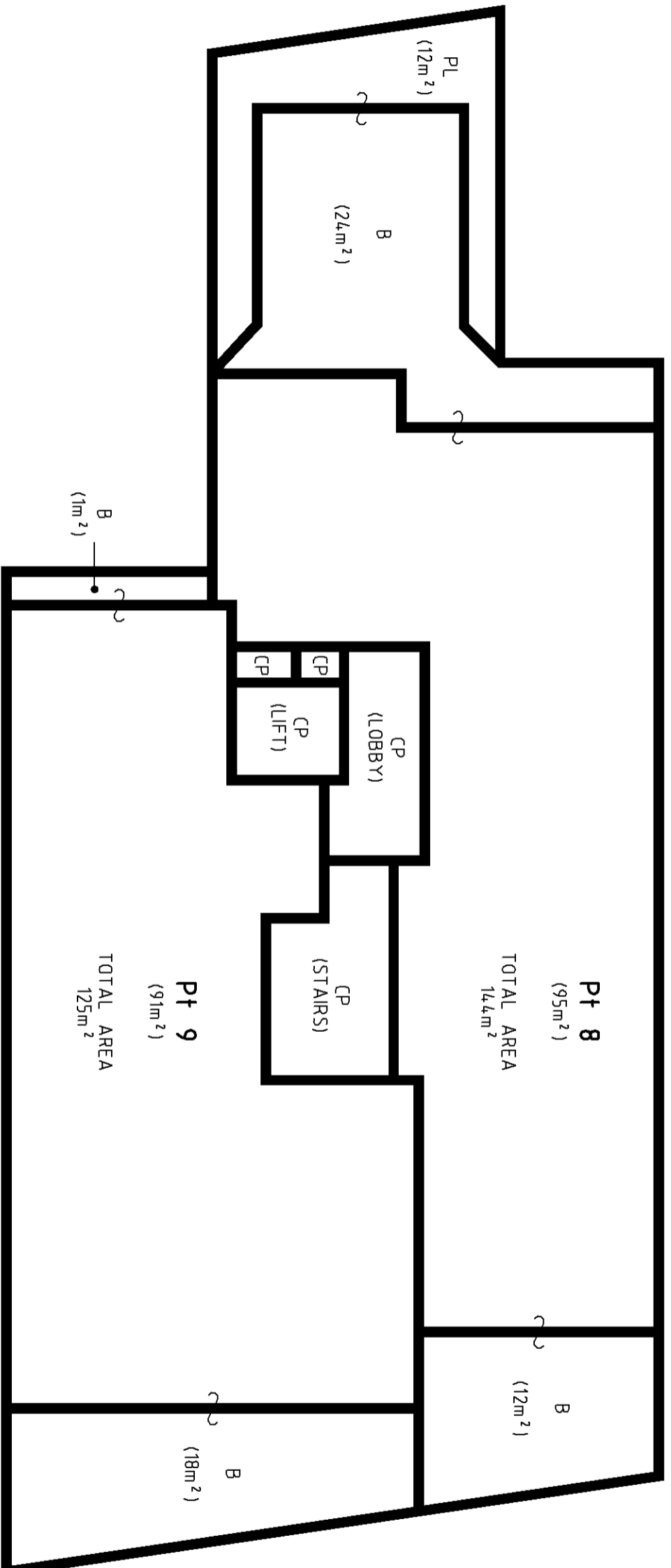


11.3.2011

SP85065

10	20	30	40	50	60	70	80	90	100	110	120	130	140	150
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Table of mm



### LEVEL 3

B DENOTES BALCONY  
 CP DENOTES COMMON PROPERTY  
 PL DENOTES PLANTER

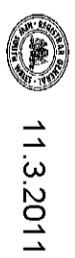
**NOTES**

AREAS ARE APPROXIMATE AND ARE FOR THE PURPOSES OF THE STRATA SCHEMES (FREEHOLD DEVELOPMENT) ACT, 1973.

BALCONIES AND PLANTERS ARE LIMITED IN HEIGHT TO 3 METRES ABOVE THE UPPER SURFACE OF THEIR RESPECTIVE UNITS SLAB LEVEL EXCEPT WHERE COVERED.

10	20	30	40	50	60	70	80	90	100	110	120	130	140	150
Table of mm														

Surveyor: ADAM DIRK OCHTMANVEERSEMA  
 Surveyor's Ref: 1045E  
 Subdivision No: S002/11  
 Lengths are in metres. Reduction Ratio 1: 100



Registered  
 11.3.2011

**SP85065**

**STRATA PLAN FORM 3 (PART 1) WARNING: Creasing or folding will lead to rejection**

<b>STRATA PLAN ADMINISTRATION SHEET</b>		Sheet 1 of 3 sheet(s)
<p>Name of, and address for service of notices on, the Owners Corporation. (Address required on original strata plan only)</p> <p><b>The Owners - Strata Plan No 85065</b></p> <p>572-574 MILITARY ROAD MOSMAN NSW 2088</p>	<p style="text-align: right;">Office Use Only</p> <h1 style="margin: 0;">SP85065</h1>	
<p>The adopted by-laws for the scheme are:</p> <p>* A <del>Model By-laws</del>  <del>together with, Keeping of animals Option *A*/B*/C</del>                  *By-laws in 24 sheets filed with plan.                  * strike out whichever is inapplicable                  ^ Insert the type to be adopted (Clause 27 SSM Regulation 2010)</p>	<p style="text-align: right;">Office Use Only</p> <p>Registered:  11.3.2011</p> <p>Purpose: STRATA PLAN</p>	
<p style="text-align: center;"><b>Strata Certificate (Approved Form 5)</b></p> <p>(1) *The Council of.....                  *The Accredited Certifier <u>ROBIN HOWARD</u>                  Accreditation No. <u>BPB0802</u></p> <p>has made the required inspections and is satisfied that the requirements of;</p> <p>* (a) Section 37 or 37A Strata Schemes (Freehold Development) Act 1973 and clause 29A Strata Schemes (Freehold Development) Regulation 2007,                  * (b) <del>Section 66 or 66A Strata Schemes (Leasehold Development) Act 1986 and clause 30A of the Strata Schemes (Leasehold Development) Regulation 2007,</del></p> <p>have been complied with and approves of the proposed strata plan illustrated in the plan with this certificate.</p> <p>* (2) The Accredited Certifier is satisfied that the plan is consistent with a relevant development consent in force, and that all conditions of the development consent that by its terms are required to be complied with before a strata certificate may be issued, have been complied with.</p> <p>* (3) <del>The strata plan is part of a development scheme. The council or accredited certifier is satisfied that the plan is consistent with any applicable conditions of the relevant development consent and that the plan gives effect to the stage of the strata development contract to which it relates.</del></p> <p>* (4) The building encroaches on a public place and;                  * (a) <del>The Council does not object to the encroachment of the building beyond the alignment of</del>                  .....                  * (b) The Accredited Certifier is satisfied that the building complies with the relevant development consent which is in force and allows the encroachment.</p> <p>* (5) <del>This approval is given on the condition that lot(s) ^ created as utility lots in accordance with section 39 of the Strata Schemes (Freehold Development) Act 1973 or section 68 of the Strata Schemes (Leasehold Development) Act 1986.</del></p> <p>Date <u>14 FEBRUARY 2011</u>                  Subdivision No. <u>S002/11</u>                  Relevant Development Consent No. <u>S.2008.323.2</u>                  issued by <u>MOSMAN COUNCIL</u>                    .....                  * Authorised Person / General Manager / Accredited Certifier</p> <p>* Strike through if inapplicable.                  ^ Insert lot numbers of proposed utility lots.</p>	<p style="text-align: center;"><b>PLAN OF OF SUBDIVISION OF LOT 200 IN DP 1149598</b></p> <p>LGA: MOSMAN                  Locality: MOSMAN                  Parish: WILLOUGHBY                  County: CUMBERLAND</p>	
<p style="text-align: center;"><b>Surveyor's Certificate (Approved Form 3)</b></p> <p>I, <u>ADAM DIRK OCHTMAN VEERSEMA</u>  <u>USHER &amp; COMPANY PTY LIMITED</u>                  of <u>PO BOX 1199, CHATSWOOD NSW 2057</u>                  a surveyor registered under the Surveying and Spatial Information Act, 2002, hereby certify that:</p> <p>(1) Each applicable requirement of                  * Schedule 1A of the Strata Schemes (Freehold Development) Act 1973  <del>* Schedule 1A of the Strata Schemes (Leasehold Development) Act 1986</del>                  has been met;</p> <p>* (2) * (a) the building encroaches on a public place;  <del>* (b) the building encroaches on land (other than a public place), and an appropriate easement has been created by ^ to permit the encroachment to remain;</del></p> <p>* (3) the survey information recorded in the accompanying location plan is accurate.</p> <p style="text-align: right;">Signature:                   Date: <u>14/2/2011</u></p> <p>* Strike through if inapplicable.                  ^ Insert the Deposited Plan Number or Dealing Number of the instrument that created the easement</p>	<p style="text-align: center;"><b>SURVEYOR'S REFERENCE: 1045E</b></p> <p style="text-align: center;">Use STRATA PLAN FORM 3A for additional certificates, signatures and seals</p>	

STRATA PLAN FORM 3 (PART 2) WARNING: Creasing or folding will lead to rejection

STRATA PLAN ADMINISTRATION SHEET

Sheet 2 of 3 sheet(s)

PLAN OF OF SUBDIVISION OF LOT 200  
IN DP 1149598

SP85065

Office Use Only

Registered:



11.3.2011

Office Use Only

Strata Certificate Details: Subdivision No: S 002/11

Date: 14 FEBRUARY 2011

SCHEDULE OF UNIT ENTITLEMENT  
(If space is insufficient use additional annexure sheet)

LOT NO.	UNIT ENTITLEMENT
1	9
2	7
3	9
4	9
5	6
6	10
7	11
8	14
9	13
10	7
11	5
AGG.	100

Signatures, seals and statements of intention to create easements, restrictions on the use of land or positive covenants  
(if insufficient space use additional annexure sheet)

SURVEYOR'S REFERENCE: 1045E

STRATA PLAN FORM 3A (Annexure Sheet) WARNING: Creasing or folding will lead to rejection

STRATA PLAN ADMINISTRATION SHEET

Sheet 3 of 3 sheet(s)

Office Use Only

PLAN OF OF SUBDIVISION OF LOT 200  
IN DP 1149598

SP85065

Office Use Only


Registered:

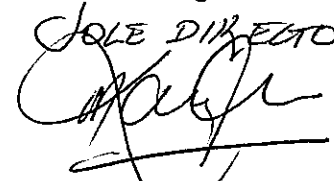


11.3.2011

Strata Certificate Details: Subdivision No: 5002/11

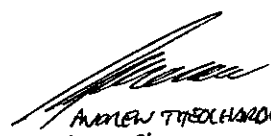
Date: 14 FEBRUARY 2011

D & T RAHME P/L  
DAVID RAHME  
SOLE DIRECTOR  
  
ACN 082 513 835

GREEN STREET P/L  
MICHAEL LANIGAN  
SOLE DIRECTOR  
  
ACN 095 726 006

SIGNED for and on behalf of ST. GEORGE BANK - A DIVISION  
OF WESTPAC BANKING CORPORATION ABN 33 007 457 141  
by its attorney under power of attorney dated 17 January 2001  
registration book 4299 no 332 in the presence of:

JOANNE MOTTERSHEAD  
TIER THREE ATTORNEY

  
ANDREW THEOHAROUS  
WITNESS  
LEVEL 5/2-14 MCKERRITT ST  
BANKSTOWN NSW 2200

SURVEYOR'S REFERENCE: 1045E





Form: 13RPA  
 Release: 2.3  
 www.lpma.nsw.gov.au

**RESTRICTION ON  
 USE OF LAND BY  
 PRESCRIBED AUTHORITY**

**AF931659T**

New South Wales  
 Section 88E(3) Conveyancing Act 1919

**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.

(A) TORRENS TITLE	200/1149598		
(B) LODGED BY	Document Collection Box	Name, Address or DX, Telephone, and Customer Account Number if any	CODE
	<i>W</i>	USHER & COMPANY PTY LTD PO Box 1199 CHATTWOOD NSW 2057 Reference: 1045	<b>RV</b>
(C) REGISTERED PROPRIETOR	Of the above land <i>ACN</i> D & T RAHME PTY LTD and GREENE STREET PTY LTD <i>113804490</i> <i>ACN 082513835</i>		
(D) LESSEE MORTGAGEE or CHARGE	Of the above land agreeing to be bound by this restriction		
	Nature of Interest	Number of Instrument	Name
	Mortgage	AE926874	Mortgage to St George Bank Limited
(E) PRESCRIBED AUTHORITY	Within the meaning of section 88E(1) of the Conveyancing Act 1919 Mosman Council		

(F) The prescribed authority having imposed on the above land a restriction in the terms set out in annexure A hereto applies to have it recorded in the Register and certifies this application correct for the purposes of the Real Property Act 1900.  
 DATE

(G) I certify that an authorised officer of the prescribed authority who is personally known to me or as to whose identity I am otherwise satisfied signed this application in my presence.

Signature of witness: <i>[Signature]</i>	Signature of authorised officer: <i>[Signature]</i>
Name of witness: ANTHONY FITZPATRICK	Name of authorised officer: VIVIAN MAY
Address of witness: MOSMAN COUNCIL MOSMAN SQUARE, MOSMAN 2088	Position of authorised officer: GENERAL MANAGER

Certified correct for the purposes of the Real Property Act 1900 and executed on behalf of the corporation named below by the authorised person(s) whose signature(s) appear(s) below pursuant to the authority specified.

Corporation:  
 Authority:

Signature of authorised person: *[Signature]*  
 Name of authorised person: DAVID RAHME  
 Office held: SOLE DIRECTOR / SECRETARY

Signature of authorised person: *[Signature]*  
 Name of authorised person: MICHAEL LANIGAN  
 Office held: SOLE DIRECTOR / SECRETARY

(H) The mortgagee under mortgage No. AE926874 agrees to be bound by this restriction. I certify that the above mortgagee, who is personally known to me or as to whose identity I am otherwise satisfied, signed this application in my presence.  
 Signed for and on behalf of St. George Bank - A Division of Westpac Banking Corporation ABN 33 007 457 141 by its attorney  
 Signature of mortgagee: Under power of attorney dated 17 January 2001 Registrar book 4299 no 332.  
 Signature of witness: *[Signature]*  
 Name of witness: ANDREW THEOCHAROUS  
 Address of witness: LEVEL 5/12-1 HICKS SMITH STREET BUNSWAIN NSW 2200  
*Reviewed*  
*ROBERT RAYMOND TIER 3*

## Annexure A

(Sheet 1 of 1 sheets)

**Folio Identifier:**

200/1149598

**Full Name and Address of the Registered Proprietor of the Land:**

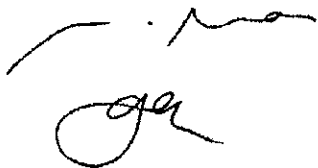
D and T Rahme Pty Ltd and  
Green Street Pty Ltd  
[of 5/5 Earle Street, Mosman NSW 2039]

**1. Terms of restriction on use of land**

- 1.1 Subject to clause 1.2, the Registered Proprietors must not remove, modify or otherwise interfere with any retaining wall or other structure erected or situated on or in the Lot Burdened which gives structural support to the road.
- 1.2 The Registered Proprietors may from time to time provide an alternate method of structural support to the road provided that such alternate method of structural support has been approved by Mosman Council.
- 1.3 In this restriction on use of land, the term "Registered Proprietors" shall include the registered proprietors of the land from time to time and all their heirs, executors, assigns and successors in title to the land and where there are two or more registered proprietors of the land the terms of this restriction on use of land shall bind all those registered proprietors jointly and severally.

**Name of authority empowered to release vary or modify the restriction on use of land**

Mosman Council

A handwritten signature in black ink, appearing to be 'J. M.', is written above a larger, more stylized signature that looks like 'J. M.' or 'J. M. S.'.

Page 2 of 2

Form: 15CB  
Release: 2.2  
www.lands.nsw.gov.au

**CHANGE OF BY-LAW**  
New South Wales  
Real Property Act 1900



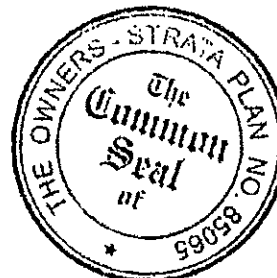
**AG382165D**

**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.

(A) TORRENS TITLE	For the common property CP/SP85065	
(B) LODGED BY	Document Collection Box	Name, Address or DX, Telephone, and LLPN if any DOMAIN LEGAL PROPERTY LAWYERS DX 10633 NORTH SYDNEY TEL:9929 2066
	Reference:	
		CODE <b>CB</b>

- (C) The Owners-Strata Plan No. 85065 certify that pursuant to a resolution passed on 27 June 2011 and  
(D) in accordance with the provisions of section No. 52 (1) of the Strata Schemes Management Act 1996 the by-laws are changed as follows—  
(E) Repealed by-law No. NOT APPLICABLE  
Added by-law No. NOT APPLICABLE  
Amended by-law No. 34  
as fully set out below:

BY-LAW 34.1 IS AMENDED AS SET OUT IN ANNEXURE "A" HERETO



(F) The common seal of the Owners-Strata Plan No. 85065 was affixed on 05 July 2011 in the presence of—

Signature(s):   
Name(s): MICHAEL KALTOOM

being the person(s) authorised by section 238 of the Strata Schemes Management Act 1996 to attest the affixing of the seal.

(G) ~~COUNCILS CERTIFICATE UNDER SECTION 56(4) OF THE STRATA SCHEMES MANAGEMENT ACT 1996~~

I certify that ~~has approved the change of by-laws set out herein:~~

Signature of authorised officer:

Name of authorised officer:

Position of authorised officer:

**THIS IS THE ANNEXURE "A" TO THE CHANGE OF BY LAWS  
PARTIES: THE OWNERS STRATA PLAN 85065  
DATE: 27 JUNE 2011**

**AMENDED BY-LAW 34**

By-Law 34.1 is amended as follows:

"34.1 An owner or occupier of a lot set out in the left hand column in the Schedule below (the "MCSS Benefited Lot Owner") has, in respect of the relevant area shown in the sketch attached as Attachment "A" to these by-laws and marked with the same notation set out in the right hand column in the Schedule below (the "MCSS Exclusive Use Area") a right of exclusive use to park or stand a motor or other vehicle in the allocated bay corresponding therewith in the mechanical car parking stacking system ("MCSS") situated on the basement level of the Building.

(a) That the Schedule set out in By-Law 34.1 be replaced with the following Schedule:

Lot Benefited	MCSS Exclusive Use Area
1	Upper Bay in Exclusive Use Area "C"
2	Upper Bay in Exclusive Use Area "D"
3	Upper Bay in Exclusive Use Area "B"
5	Lower Bay in Exclusive Use Area "D"
6 (Lot 12 in SP85347)	Lower Bay in Exclusive Use Area "B"
8	Upper Bay in Exclusive Use Area "A" and Lower Bay in Exclusive Use Area "C"
11	Lower Bay in Exclusive Use Area "A"

(b) Pursuant to which the right of exclusive use to park or stand a motor or other vehicle in the mechanical car parking stacking system situated on the basement level of the Building be amended as follows:

- (1) The Lower Bay in Exclusive Use Area "B" in the mechanical car parking stacking system situated on the basement level of the Building that benefited existing Lot 3 will be revoked as regards to that lot and will instead be granted in favor of existing Lot 6 (which will become Lot 12 in Strata Plan 85347 referred to in Motion No. 10 set out in the Minutes of the First Annual general meeting held on 7 June 2011.
- (2) The Lower Bay in Exclusive Use Area "C" in the mechanical car parking stacking system situated on the basement level of the Building that benefited existing Lot 6 will be revoked as regards to that lot and will instead be granted in favor of existing Lot 8.
- (3) The Upper Bay in Exclusive Use Area "B" in the mechanical car parking stacking system situated on the basement level of the Building that benefited existing Lot 8 will be revoked as regards to that lot and will instead be granted in favor of existing Lot 3.

The common seal of the Owners - Strata Plan No 85065 was hereunto affixed on *the fifth day of July 2011* in the presence of **Michael Kaltoum** being the person(s) authorised by section 238 of the Strata Schemes Management Act 1996 to attest the affixing of the seal.

Signature(s):



Name(s): **Michael Kaltoum**



## National Strata Management

ABN: 35 003 042 617

P.O. Box 3349 Parramatta NSW 2124

Ph: 02 9721 1511 Fax: 02 9721 1522

Email: [admin@nationalstrata.com.au](mailto:admin@nationalstrata.com.au)

film with

27 June 2011

FILE COPY

The owners Strata Plan 85065  
572 Military Road, Mosman

### **STRATA SCHEMES MANAGEMENT ACT 1996 MINUTES OF EXTRAORDINARY GENERAL MEETING OF THE OWNERS CORPORATION OF STRATA PLAN 85065 – 572 Military Road, Mosman**

**Meeting held:** on site – 572 Military Road, Mosman  
**Meeting Date :** Monday 27 June 2011

**Owners Present:** David D. Madden (lot 7)  
David Rahme (lots 8,10,11)

**Proxies:** Darshna Patel for Bharat Patel (Lot 3)

**Chairperson:** Michael Kaltoum of National Strata Management chaired the meeting and declared the meeting opened at 6:20 PM after a quorum was established.

#### AGENDA

1. Resolved that the meeting be confirmed at the next general meeting.
2. Amendment of Strata Plan SP85065  
Resolved that by **ordinary resolution and subject to the passing of the special resolution in Motion No.3 set out below**, the Owners Corporation agrees to:
  - (a) the proposed amendment of strata plan 85065, pursuant to which that area of approximately 14 square meters, being the car space forming part of existing Lot 6 situated on the basement of the strata scheme, will effectively become part of existing Lot 10; and
  - (b) Execute under common seal of the owners corporation and lodge for registration all documentation required from the owners corporation, to enable such amendment to be lodged for registration, in accordance with the *Strata Schemes (Freehold Development) Act 1973* and the *Strata Schemes Management Act 1996*, at the NSW Land and Property Management Authority.

### 3. Amendment of By-Law 34 – Special Resolution

The owners corporation resolved by *special* resolution pursuant to S.52 (1) of the *Strata Schemes Management Act 1996* (the Act), that the following **amendment** to the by-laws applying to strata scheme 85065 be made and that notification of such be lodged for registration in accordance with the Act at the NSW Land and Property Management Authority under common seal of the owners corporation:

- (a) That the Schedule set out in By-Law 34.1 be replaced with the following Schedule:

Lot Benefited	MCSS Exclusive Use Area
1	Upper Bay in Exclusive Use Area "C"
2	Upper Bay in Exclusive Use Area "D"
3	Upper Bay in Exclusive Use Area "B"
5	Lower Bay in Exclusive Use Area "D"
6 (Lot 12 in SP85347)	Lower Bay in Exclusive Use Area "B"
8	Upper Bay in Exclusive Use Area "A" and Lower Bay in Exclusive Use Area "C"
11	Lower Bay in Exclusive Use Area "A"

- (b) Pursuant to which the right of exclusive use to park or stand a motor or other vehicle in the mechanical car parking stacking system situated on the basement level of the Building be amended as follows:
- (1) The Lower Bay in Exclusive Use Area "B" in the mechanical car parking stacking system situated on the basement level of the Building that benefited existing Lot 3 will be revoked as regards to that lot and will instead be granted in favor of existing Lot 6 (which will become Lot 12 in Strata Plan 85347 referred to in Motion No. 10 set out in the Minutes of the First Annual general meeting held on 7 June 2011.
  - (2) The Lower Bay in Exclusive Use Area "C" in the mechanical car parking stacking system situated on the basement level of the Building that benefited existing Lot 6 will be revoked as regards to that lot and will instead be granted in favor of existing Lot 8.
  - (3) The Upper Bay in Exclusive Use Area "B" in the mechanical car parking stacking system situated on the basement level of the Building that benefited existing Lot 8 will be revoked as regards to that lot and will instead be granted in favor of existing Lot 3.

Meeting closed: 7:00 PM.

Signed by

Chairman

This

day of

20

### CONSENT TO EXCLUSIVE USE BY-LAW BY OWNER

To: The Secretary  
The Owners – Strata Plan 85065  
572-574 Military Road  
Mosman NSW 2088

As the owners of Lot 6 in Strata Plan No. 85065, in accordance with section 52(1) of the *Strata Schemes Management Act 1996*, we consent to amendment of by-law 34.1 referred to in Motion 3 of the Minutes of Extraordinary General Meeting dated 27 June 2011, which amendment will give us a right of exclusive use to park or stand a motor or other vehicle in the Lower Bay in Exclusive Use Area "B" in the mechanical car park stacking system situated on the basement level of the Building.

Dated: 11/7/2011

Signed:

The common seal of  
**D&T RAHME PTY LTD** ACN 082 513 835  
is hereunto affixed in the presence of

.....  
Signature of Director

.....  
Name of Director

  
.....  
Signature of Director/Secretary

DAVID RAHME  
.....  
Name of Director/Secretary

The common seal of  
**GREEN STREET PTY LTD** ACN 095 726 006  
is hereunto affixed in the presence of

.....  
Signature of Director

.....  
Name of Director

  
.....  
Signature of Director/Secretary

Michael Lanigan  
.....  
Name of Director/Secretary

Owners of Lot 6 in SP85065

### CONSENT TO EXCLUSIVE USE BY-LAW BY OWNER

To: The Secretary  
The Owners – Strata Plan 85065  
572-574 Military Road  
Mosman NSW 2088

As the owners of Lot 8 in Strata Plan No. 85065, in accordance with section 52(1) of the *Strata Schemes Management Act 1996*, we consent to amendment of by-law 34.1 referred to in Motion 3 of the Minutes of Extraordinary General Meeting dated 27 June 2011, which amendment will give us a right of exclusive use to park or stand a motor or other vehicle in the Lower Bay in Exclusive Use Area "C" in the mechanical car park stacking system situated on the basement level of the Building.

Dated: 11/7/2011

Signed:

The common seal of  
**D&T RAHME PTY LTD** ACN 082 513 835  
is hereunto affixed in the presence of

~~.....~~  
Signature of Director

~~.....~~  
Name of Director

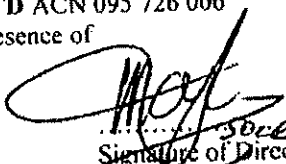
  
.....  
Signature of Director/Secretary

DAVID RAHME  
Name of Director/Secretary

The common seal of  
**GREEN STREET PTY LTD** ACN 095 726 006  
is hereunto affixed in the presence of

~~.....~~  
Signature of Director

~~.....~~  
Name of Director

  
.....  
Signature of Director/Secretary

Michael Lanigan  
Name of Director/Secretary

Owners of Lot 8 in SP85065



Form: 15CB  
Release: 2.2  
www.lands.nsw.gov.au

**CHANGE OF BY-LAW**  
New South Wales  
Real Property Act 1900



**AG358368A**

**PRIVACY NOTE:** Section 31B of the Real Property Act 1900 (RP Act) authorises the use of 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.

(A) TORRENS TITLE	For the common property CP/SP85065	
(B) LODGED BY	Document Collection Box	Name, Address or DX, Telephone, and LLPN if any <i>Usher &amp; Company Pty Ltd Po Box 1199 CHATELWOOD NSW 2057 ph 9411 8166</i>
	Reference:	
		CODE <b>CB</b>

- (C) The Owners-Strata Plan No. 85065 certify that pursuant to a resolution passed on 07 June 2011 and  
 (D) in accordance with the provisions of section No. 52(1) of the Strata Schemes Management Act 1996  
 the by-laws are changed as follows—  
 (E) Repealed by-law No. NOT APPLICABLE  
 Added by-law No. NOT APPLICABLE  
 Amended by-law No. 34.1  
 as fully set out below:

BY-LAW 34.1 IS AMENDED AS SET OUT IN ANNEXURE "A" HERETO



(F) The common seal of the Owners-Strata Plan No. 85065 was affixed on 23 June 2011 in the presence of—

Signature(s): [Signature]  
Name(s): Michael Kallourm

being the person(s) authorised by section 238 of the Strata Schemes Management Act 1996 to attest the affixing of the seal.

(G) **COUNCILS CERTIFICATE UNDER SECTION 56(4) OF THE STRATA SCHEMES MANAGEMENT ACT 1996**

I certify that \_\_\_\_\_ has approved the change of by-laws set out herein.

Signature of authorised officer: \_\_\_\_\_  
Name of authorised officer: \_\_\_\_\_ Position of authorised officer: \_\_\_\_\_

**THIS IS THE ANNEXURE "A" TO THE CHANGE OF BY LAWS  
 PARTIES: THE OWNERS STRATA PLAN 85065  
 DATE: 7 June 2011**

**AMENDED BY-LAW "34.1"**

By-Law 34.1 is amended as follows:

An owner or occupier of a lot set out in the left hand column in the Schedule below (the "MCSS Benefited Lot Owner") has, in respect of the relevant area shown in the sketch attached as Attachment "A" to these by-laws and marked with the same notation set out in the right hand column in the Schedule below (the "MCSS Exclusive Use Area") a right of exclusive use to park or stand a motor or other vehicle in the allocated bay corresponding therewith in the mechanical car parking stacking system ("MCSS") situated on the basement level of the Building.

**Schedule**

<b>Lot Benefited</b>	<b>MCSS Exclusive Use Area</b>
1	Upper Bay in Exclusive Use Area "C"
2	Upper Bay in Exclusive Use Area "D"
3	Lower Bay in Exclusive Use Area "B"
5	Lower Bay in Exclusive Use Area "D"
8	Upper Bay in Exclusive Use Area "A" and Upper Bay in Exclusive Use Area "B"
Lot 12 in SP85347	Lower Bay in Exclusive Use Area "C"
11	Lower Bay in Exclusive Use Area "A"

The common seal of the Owners - Strata Plan No 85065 was hereunto affixed on *23 June 2011* in the presence of *Michael Kaitoum* being the person(s) authorised by section 238 of the Strata Schemes Management Act 1996 to attest the affixing of the seal.



Signature(s): *[Handwritten Signature]*  
 Name(s): *Michael Kaitoum*

**CONSENT BY OWNER TO REVOCATION OF  
EXCLUSIVE USE BY-LAW BENEFITING OWNER'S LOT**

To: The Secretary  
The Owners -- Strata Plan 85065  
572-574 Military Road  
Mosman NSW 2088

As the owners of Lot 10 in Strata Plan No. 85065, in accordance with section 52(1) of the *Strata Schemes Management Act 1996*, we consent to amendment of by-law 34.1 referred to in Motion [No. 3] of the Notice of Extraordinary General Meeting dated [insert date], which amendment will effect a revocation of our right of exclusive use to park or stand a motor or other vehicle in the Lower Bay in Exclusive Use Area "C" in the mechanical car parking stacking system situated on the basement level of the Building.

Dated: 8/7/11

Signed:

The common seal of  
**D&T RAHME PTY LTD** ACN 082 513 835  
is hereunto affixed in the presence of

.....  
Signature of Director

.....  
Name of Director

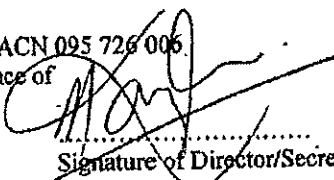
  
Signature of Director/Secretary (SOLE DIRECTOR)

DAVID RAHME  
Name of Director/Secretary

The common seal of  
**GREEN STREET PTY LTD** ACN 095 726 006  
is hereunto affixed in the presence of

.....  
Signature of Director

.....  
Name of Director

  
Signature of Director/Secretary (SOLE DIRECTOR)

MICHAEL LANIGAN  
Name of Director/Secretary

Owners of Lot 10 in SP85065

**CONSENT TO EXCLUSIVE USE BY-LAW BY OWNER**

To: The Secretary  
The Owners – Strata Plan 85065  
572–574 Military Road  
Mosman NSW 2088


As the owners of Lot 6 in Strata Plan No. 85065, in accordance with section 52(1) of the *Strata Schemes Management Act 1996*, we consent to amendment of by-law 34.1 referred to in Motion [No. \*] of the Notice of Extraordinary General Meeting dated [insert date], which amendment will give us a right of exclusive use to park or stand a motor or other vehicle in the Lower Bay in Exclusive Use Area "C" in the mechanical car parking stacking system situated on the basement level of the Building.

Dated: 8/7/11

Signed:

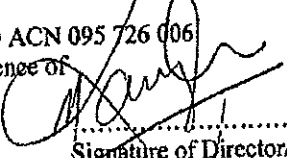
The common seal of  
**D&T RAHME PTY LTD ACN 082 513 835**  
is hereunto affixed in the presence of

.....  
Signature of Director  
.....  
Name of Director

  
Signature of Director/Secretary (SOLE DIRECTOR)  
**DAVID RAHME**  
Name of Director/Secretary

The common seal of  
**GREEN STREET PTY LTD ACN 095 726 006**  
is hereunto affixed in the presence of

.....  
Signature of Director  
.....  
Name of Director

  
Signature of Director/Secretary (SOLE DIRECTOR)  
**MICHAEL VANIGAN**  
Name of Director/Secretary

Owners of Lot 6 in SP85065



Form: 13PC  
 Release: 2.2  
 www.ipma.nsw.gov.au

**POSITIVE COVENANT**  
 New South Wales  
 Section 88E(3) Conveyancing Act

**AF931658V**

**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 98B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

(A) TORRENS TITLE	200/1149598		
(B) LODGED BY	Document Collection Box <i>W</i>	Name, Address or DX, Telephone, and Customer Account Number if any USHER & COMPANY Pty LTD PO BOX 1199 CHATSWOOD NSW 2057 Reference: 1045	CODE <b>PC</b>
(C) REGISTERED PROPRIETOR	REN 0825 1385 ACN713804490 D & T RAHME PTY LTD and GREENE STREET PTY LTD AS TENANTS IN COMMON IN EQUAL SHARES		
(D) LESSEE MORTGAGEE or CHARGE	Of the above land agreeing to be bound by this positive covenant		
	Nature of Interest	Number of Instrument	Name
	Mortgage	AE926874	Mortgage to St George Bank Limited
(E) PRESCRIBED AUTHORITY	Mosman Council		

(F) The prescribed authority having imposed on the above land a positive covenant in the terms set out in annexure A hereto applies to have it recorded in the Register and certifies this application correct for the purposes of the Real Property Act 1900.

**DATE**

(G) Execution by the prescribed authority  
 I certify that an authorised officer of the prescribed authority who is personally known to me or as to whose identity I am otherwise satisfied signed this application in my presence.

Signature of witness:  *[Signature]* Signature of authorised officer:  *[Signature]*  
 Name of witness:  ANTHONY FITZPATRICK Name of authorised officer:  VIVIAN MAY  
 Address of witness:  MOSMAN COUNCIL Position of authorised officer:  GENERAL MANAGER  
 Address of witness:  MOSMAN SQUARE, MOSMAN 2088

(G) Execution by the registered proprietor

Certified correct for the purposes of the Real Property Act 1900 and executed on behalf of the corporation named below by the authorised person(s) whose signature(s) appear(s) below pursuant to the authority specified.  
 Corporation: D & T RAHME PTY LTD and GREENE STREET PTY LTD  
 Authority:

Signature of authorised person: *[Signature]* Signature of authorised person: *[Signature]*  
 Name of authorised person: DAVID RAHME Name of authorised person: MICHAEL LANIGAN  
 Office held: SOLE DIRECTOR / SECRETARY Office held: SOLE DIRECTOR / SECRETARY

(H) Consent of the mortgagee

The mortgagee under mortgage No. AE926874, agrees to be bound by this positive covenant.  
 I certify that the above mortgagee who is personally known to me or as to whose identity I am otherwise satisfied signed this application in my presence.

Signature of witness:  *[Signature]* Signed for and on behalf of St George Bank - A Division of Westpac Banking Corporation ABN 33 007 457 141 by its attorney under power of attorney dated 17  
 Signature of mortgagee:  January 2001 registration book 4299  
 Name of witness:  ANNE THORNTON  
 Address of witness:  LEVEL 5 / 274 MERRIMAN ROAD BANKSWELL NSW 2200  
 Signature of mortgagee: *[Signature]*  
 Name of mortgagee: ROBERT RAMANDETTA TROR 3

## Annexure A

(Sheet 1 of 1 sheets)

**Folio Identifier:**

200/1149598

**Full Name and Address of the Registered Proprietor of the Land:**

D and T Rahme Pty Ltd and  
Green Street Pty Ltd  
[of 5/5 Earle Street, Mosman NSW 2039]

**1. Terms of positive covenant**

- 1.1 In this positive covenant "detention system or rainwater re-use system" shall mean the detention system or rainwater re-use system approved by Mosman Council pursuant to Development Consent No.8.2008.323.1 or any modification thereof approved by Mosman Council in writing.
- 1.2 The Registered Proprietors will at their own expense well and sufficiently maintain and keep in good and substantial repair and working order any detention system/rainwater re-use system which exists from time to time on the land.
- 1.3 The Registered Proprietors shall not remove the detention system/rainwater re-use system without the prior consent of Mosman Council.
- 1.4 The Registered Proprietors hereby agree to indemnify Mosman Council from and against all claims, demands, actions, suits, causes of action, sum or sums of money, compensation damages, costs and expenses which Mosman Council or any other person may suffer or incur as a result of any malfunction or non-operation of any such detention system/rainwater re-use system arising from any failure of the Registered Proprietors to comply with the terms of this Covenant.
- 1.5 The term "Registered Proprietors" shall include the Registered Proprietors of the land from time to time and all their heirs, executors, assigns and successors in title to the land and where there are two or more registered proprietors of the land the terms of this covenant shall bind all those registered proprietors jointly and severally.

**Name of authority empowered to release vary or modify the positive covenant**

Mosman Council



Page 2 of 2

ePlan

# SP85065

## Approved Form 27

### By Laws

**Instrument setting out the terms of By Laws to be created upon registration of the strata plan.**

See attached Sheets 2 to 20 for By Laws 1 to 36 inclusive.

See attached Sheets 21 to 23 for Attachment "A" Sketch.

See attached Sheets 24 for Execution Page.



SP85065

**STRATA SCHEMES MANAGEMENT ACT, 1996**

**BY-LAWS**

**1. NOISE**

- 1.1 An owner or occupier of a lot (or any invitees of the owner or the occupier of a lot) must not create any noise on the parcel likely to interfere with the peaceful enjoyment of the owner or occupier of another lot or of any person lawfully using Common Property.

**2. VEHICLES**

- 2.1 An owner or occupier of a lot (or any invitees of the owner or occupier of a lot) must not park or stand any motor vehicle or other vehicle on Common Property except with the written approval of the Owners Corporation.

**3. OBSTRUCTION OF COMMON PROPERTY**

- 3.1 An owner or occupier of a lot (or any invitees of the owner or occupier of a lot) must not obstruct lawful use of Common Property by any person.

**4. DAMAGE TO LAWNS AND PLANTS ON COMMON PROPERTY**

- 4.1 An owner or occupier of a lot (or any invitees of the owner or occupier of a lot) must not:

- (a) damage any lawn, garden, tree, shrub, plant or flower being part of or situated on Common Property, or
- (b) use for his or her own purposes as a garden any portion of the Common Property.

**5. DAMAGE TO COMMON PROPERTY**

- 5.1 An owner or occupier of a lot must not mark, paint, drive nails or screws or the like into, or otherwise damage or deface, any structure that forms part of the Common Property without the approval in writing of the Owners Corporation.

- 5.2 An approval given by the Owners Corporation under by-law 5.1 cannot authorise any additions to the Common Property.

- 5.3 By-law 5.1 does not prevent an owner or person authorised by the owner from installing:

- (a) any locking or other safety device for protection of the owner's lot against intruders; or
- (b) any screen or other device to prevent entry of animals or insects on the lot; or



SP85065

(c) any structure or device to prevent harm to children

provided always that all relevant building and fire safety codes and regulations are complied with.

5.4 Any such locking or safety device, screen, other device or structure referred to in by-law 5.3 must be installed in a competent and proper manner and must have an appearance, after it has been installed, in keeping with the appearance of the rest of the Building.

5.5 Despite by-law 5.1 and despite section 62 of the Management Act, the owner of a lot must:

(a) maintain and keep in a state of good and serviceable repair any installation or structure referred to in by-law 5.3 that forms part of the Common Property and that services the lot; and

(b) repair any damage caused to any part of the Common Property by the installation or removal of any locking or safety device, screen, other device or structure referred to in by-law 5.3 that forms part of the Common Property and that services the lot.

## 6. BEHAVIOUR OF OWNERS AND OCCUPIERS

6.1 An owner or occupier of a lot (or any invitees of the owner or occupier of a lot) when on Common Property must be adequately clothed and must not use language or behave in a manner likely to cause offence or embarrassment to the owner or occupier of another lot or to any person lawfully using Common Property.

## 7. CHILDREN PLAYING ON COMMON PROPERTY IN BUILDING

7.1 An owner or occupier of a lot (or any invitees of the owner or occupier of a lot) must not permit any child of whom the owner or occupier has control to play on Common Property within the Building or, unless accompanied by an adult exercising effective control, to be or to remain on Common Property comprising a laundry, car parking area or other area of possible danger or hazard to children.

## 8. BEHAVIOUR OF INVITEES

8.1 An owner or occupier of a lot must take all reasonable steps to ensure that invitees of the owner or occupier do not behave in a manner likely to interfere with the peaceful enjoyment of the owner or occupier of another lot or any person lawfully using Common Property.

## 9. DEPOSITING RUBBISH AND OTHER MATERIALS ON COMMON PROPERTY

9.1 An owner or occupier of a lot must not deposit or throw on the Common Property any rubbish, dirt, dust or other material likely to interfere with the peaceful enjoyment of the owner or occupier of another lot or any person lawfully using the Common Property.

# SP85065

## 10. DRYING OF LAUNDRY ITEMS

- 10.1 An owner or occupier of a lot must not, except with the consent in writing of the Owners Corporation, hang any washing, towel, bedding, clothing or other article on any part of the parcel in such a way as to be visible from outside the Building.

## 11. CLEANING WINDOWS AND DOORS

- 11.1 An owner or occupier of a lot must keep clean all glass in windows, doors and balustrading on the boundary of the lot, including so much thereof as is Common Property and must report any breakages to the Owners Corporation.

## 12. STORAGE OF INFLAMMABLE LIQUIDS AND OTHER SUBSTANCES AND MATERIALS

- 12.1 An owner or occupier of a lot must not, except with the approval in writing of the Owners Corporation, use or store on the lot or on the Common Property any inflammable chemical, liquid or gas or other inflammable material.
- 12.2 This by-law does not apply to chemicals, liquids or gases or other material used or intended to be used for domestic purposes, or any chemical, liquid, gas or other material in a fuel tank of a motor vehicle or internal combustion engine.

## 13. MOVING FURNITURE AND OTHER OBJECTS ON OR THROUGH COMMON PROPERTY

- 13.1 Subject to by-law 29, an owner or occupier of a lot must not transport any furniture or large objects through or on Common Property within the Building unless sufficient notice has first been given to the Executive Committee or the Manager so as to allow a representative of the Owners Corporation to be present at the time when the owner or occupier does so.

## 14. FLOOR COVERINGS

- 14.1 An owner of a lot must ensure that all floor space within the lot is covered or otherwise treated to an extent sufficient to prevent the transmission from the floor space of noise likely to disturb the peaceful enjoyment of the owner or occupier of another lot.
- 14.2 By-law 14.1 does not apply to floor space comprising a kitchen, laundry, lavatory or bathroom.

## 15. GARBAGE DISPOSAL

- 15.1 An owner of a lot:
- (a) must dispose of recyclable waste by placing it in an appropriate container in the garbage room located on the Common Property;
  - (b) must ensure that before refuse is placed in any receptacle it is securely wrapped or, in the case of tins or other containers, completely drained;

# SP85065

- (c) must promptly remove any thing which the owner, occupier or garbage collector may have spilled from the receptacle and must take action as may be necessary to clean the area within which that thing was spilled, and
  - (d) must comply with the directions from time to time of the Owners Corporation as to the manner of disposal of garbage.
- 15.2 The owners or occupiers of any commercial and/or retail lots in the Building must arrange and pay for their own garbage and waste removal from the Building and must:
- (a) comply with all requirements of Mosman Council and any other relevant authority regarding storage, collection and removal of waste; and
  - (b) to the extent that the following obligations do not conflict with any obligations under by-law 15.2(a), must:
    - (i) ensure that before refuse is placed in any receptacle it is securely wrapped or, in the case of tins or other containers, completely drained; and
    - (ii) promptly remove any thing which the owner, occupier or garbage collector may have spilled from the receptacle and must take such action as may be necessary to clean the area within which that thing was spilled; and
    - (iii) comply with the directions from time to time of the Owners Corporation as to the manner of disposal of garbage.
- 15.3 Owners and occupiers of lots must use the garbage room designated in the basement level of the Building.

## **16. KEEPING ANIMALS**

- 16.1 Subject to section 49(4) of the Management Act, an owner or occupier of a lot must not keep any animal (except one small dog or one cat or small caged bird or fish kept in a secure aquarium on the lot) on the lot or the Common Property.
- 16.2 If an owner or occupier of a lot keeps a small dog, cat or small caged bird on the lot, then the owner or occupier must:
- (a) notify the Owners Corporation that the animal is kept on the lot; and
  - (b) keep the animal within the lot; and
  - (c) carry the animal when it is on the Common Property; and
  - (d) take any action that is necessary to clean all areas of the lot or the Common Property that are soiled or damaged by the animal.

# SP85065

16.3 Subject to section 49(4) of the Management Act, an owner or occupier of any commercial and/or retail lot is not permitted to keep any animal on the lot or the Common Property.

16.4 Despite any other provision of this by-law 16, on no account is an owner or occupier of a lot permitted to keep any unregistered dog or any dog which is:

- (a) a pit bull terrier, Japanese tosa or other outcross; or
- (b) prohibited from importation into Australia; or
- (c) declared to be dangerous under the *Companion Animals Act 1998* from time to time.

## 17. APPEARANCE OF LOT

17.1 The owner or occupier of a lot must not, except with the written consent of the Owners Corporation, maintain within the lot anything visible from outside the lot that, when viewed from outside the lot, is not in keeping with the rest of the Building.

17.2 By-law 17.1 does not apply to the hanging of any washing, towel, bedding, clothing or other article as prohibited by by-law 10.

## 18. NOTICE-BOARD

18.1 The Owners Corporation must cause a notice board to be affixed to some part of the Common Property.

## 19. CHANGE IN USE OF LOT TO BE NOTIFIED

19.1 An owner or occupier of a lot must notify the Owners Corporation if the owner or occupier changes the existing use of the lot in a way that may affect the insurance premiums for the strata scheme (for example, if the change of use results in a hazardous activity being carried out on the lot, or results in the lot being used for commercial or industrial purposes rather than for residential purposes).

19.2 Nothing in this by-law should be construed as authorising any owner or occupier of any lot to change the use of his or her lot. Any change of use of a lot must comply with the requirements of Mosman Council and all other relevant all competent authorities, and with these by-laws.

## 20. USE OF CARPARKING SPACES

20.1 An owner or occupier of a lot can only use the carparking space/s attached to or forming part of his or her lot (if any) for the purposes of parking motor vehicles.

20.2 An owner or occupier of a lot may not use any power point located within the carparking space attached to or forming part of his or her lot (if any) to power any electrical equipment on a continuing basis. These power sources may only be used by owners or occupiers for small appliances and on a short-term basis.

# SP85065

- 20.3 The Owners Corporation has the right to use any power source located within a lot provided that use complies with the restrictions imposed by by-law 20.2.
- 20.4 The Owners Corporation has the right to disconnect any power source used by an owner or occupier in contravention of by-law 20.2.
- 20.5 An owner or occupier of a lot having a right of exclusive use to park over a relevant part of the Common Property in the mechanical car parking stacker system under by-law 34 must comply with the provisions of that by-law, in addition to the provisions set out in this by-law 20.

## 21. CURTAINS

- 21.1 Any curtain or blind in a window or door, which faces public or common areas, must have a backing coloured beige, off-white or cream unless otherwise authorised in writing by the Owners Corporation, must not be a vertical blind, must not detract from the visible amenity of the Building, and must be in keeping with the rest of the Building.

## 22. AIR CONDITIONING IN THE BUILDING

- 22.1 Despite any by-law, the owners for the time being of each lot (not being a utility lot) shall be entitled to the exclusive use of the air conditioning equipment and ducting described in clause 22.2 of this by-law for that lot ("Air Conditioning Equipment") subject to the conditions that:
- (a) each owner shall be responsible for the running costs, the proper maintenance and keeping in a state of good and serviceable repair, the renewal and replacement of the Air Conditioning Equipment; and
  - (b) each owner must maintain the Air Conditioning Equipment to a standard and if renewed or replaced of a type and colour, as may be prescribed by the Owners Corporation from time to time.
- 22.2 For the purposes of this by-law the Air Conditioning Equipment means the air conditioning plant and equipment for each unit in the ceiling space and ducting of the Common Property servicing and adjacent to that lot.

## 23. HOT WATER SYSTEMS

- 23.1 The owner of each lot has a special privilege to connect to and use the Common Property hot water system.
- 23.2 Each owner or occupier must:
- (a) pay the Owners Corporation according to regular accounts issued by the Owners Corporation that are based on metered readings or pay these accounts directly to AGL Gas Company Limited (AGL); and
  - (b) give the Owners Corporation access to his or her lot to read any hot water meters located in that lot.

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## 23.3 The Owners Corporation must:

- (a) operate, maintain, repair and replace the hot water system; and
- (b) give owners and occupiers regular accounts for their costs under this by-law 23.

23.4 The Owners Corporation may have agreements with third parties about the operation, maintenance, repair and replacement of the hot water system.

23.5 The Owners Corporation may discontinue the hot water service to an owner's lot if the owner or occupier has not paid the Owners Corporation's costs under this by-law 23.

23.6 The Owners Corporation does not have to reinstate the hot water service until the owner or occupier pays the cost.

## 24. STRUCTURAL SUPPORT IN THE BUILDING

24.1 An owner or occupier must not carry out any alteration to any part of the Building which renders structural support to any other part of the Building without first submitting copies of all relevant plans and approvals to the Owners Corporation and obtaining the written permission of the Owners Corporation to the proposed alteration. The consent of Mosman Council and any other relevant authority must also be obtained for the alteration and any works approved by the Owners Corporation must be carried out in accordance with the conditions imposed by the consent authority and the Owners Corporation.

## 25. COMMERCIAL/RETAIL LOTS

25.1 The owner or occupier for the time being of any commercial and/or retail lot (hereinafter individually and collectively referred to in this by-law 25 as the "Owner") is entitled at any time to make application to Mosman Council and any other relevant authority for consent to specific uses of a commercial and/or retail lot. The Owners Corporation and all other lot owners must consent to the lodgement of any application to Mosman Council by the Owner for the time being of a commercial and/or retail lot and they acknowledge that the sole consent authority for a specific use of a commercial and/or retail lot is Mosman Council.

25.2 If a specific use of a commercial and/or retail lot is approved, the Owners Corporation must also consent to the installation of any equipment required by statute for the conduct of the approved business within the commercial and/or retail lot.

25.3 Before the installation of any signage an Owner must obtain, at such Owner's expense, all necessary consents from Mosman Council and any other relevant authority required for such installation, and provide a copy of the consent to the Owners Corporation.

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- 25.4 An Owner is permitted to place signs or any other form of advertising in or about the floor of the common property or on the footpath outside his or her commercial and/or retail lot, provided the Owner obtains, at the Owner's expense, prior to placing the signs in or about the floor of the common property or on the footpath outside his or her commercial and/or retail lot, the written consent of the Owners Corporation and all necessary consents from Mosman Council and any other relevant authority.
- 25.5 In addition to the foregoing, and provided by-law 25.3 is complied with, an Owner is entitled to install an under awning signage light box or sign (if applicable) immediately outside that Owner's commercial and/or retail lot, at the Owners expense. The under awning signage light box or sign must be limited in size to 1.5 metres x 200mm x 100mm deep, and may contain a fluorescent light and translucent signage covers on each side.
- 25.6 The terms on which use is granted to the Owner of a commercial and/or retail lot pursuant to this by-law 25 are:
- (a) the Owner will be liable for any damage caused to any part of the Building as a result of them failing to properly observe the terms of this by-law 25;
  - (b) the Owner must indemnify the Owners Corporation from and against any loss or damage that may be suffered as a result of an Owner's rights pursuant to this by-law 25; and
  - (c) the Owner is solely responsible for the installation, ongoing costs (including electricity), and repair and maintenance of signage relating to its respective lot.

## **26. SIGNAGE**

- 26.1 Subject to by-laws 25 and 34, and except for the Original Owner, owners and occupiers must not, without the consent of the Owners Corporation, erect advertising or other signs in or on the exterior of the Building. This restriction includes, without limitation, signs that advertise that a lot is for sale or available for lease.
- 26.2 The rights granted to the Original Owner pursuant to by-law 26.1 continue until the Original Owner completes the sale of all lots in the Building.
- 26.3 The owners corporation may make, amend or repeal this by-law only:
- (a) with the written consent of the Original Owner; and
  - (b) in accordance with a special resolution.
- 26.4 Subject to by-laws 25 and 34, no name, writing, drawing, sign board, plate, placard, signal, advertisement or illumination may be inscribed or exposed on or at any window or other part of the Building, and no article may be projected out of any window or over any balcony without the approval in writing of the Owners Corporation.

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## 27. PARKING AND DELIVERIES

27.1 Owners and occupiers of lots must ensure that all deliveries, particularly deliveries by removalist trucks, are made from Common Property areas designated for such purpose in the Building.

## 28. LIFTS

28.1 The owners of the lots are entitled to exclusive use and enjoyment of the lift located in the Building and the Owners Corporation will be solely responsible for the cost of proper maintenance of the lift and keeping it in a state of good repair.

## 29. MOVING OF CERTAIN ARTICLES

29.1 An owner or occupier of a lot must not transport any goods, equipment, furniture or other large objects to and from lots and through Common Property ("Removals") unless:

- (a) A booking has been made with the Manager in writing within a reasonable time (at least 24 hrs) before Removals are carried out: -
  - (i) to book the lift;
  - (ii) to ensure that lift covers are in place;
  - (iii) to give notice of any necessary security arrangements; and
  - (iv) to notify any representative of the Owners Corporation (if considered necessary).
- (b) Removals may only be carried out on Mondays to Saturdays between the hours of 9.00am and 4.00pm or in accordance with the permitted hours determined by the Owners Corporation from time to time;
- (c) Removals are not carried out on Sundays;
- (d) All areas are protected from damage when carrying out Removals and all rubbish is removed from the strata scheme and its surrounds; and
- (e) All Removals are transported in the manner reasonably directed by the Owners Corporation or the Manager.

29.2 Despite clause 29.1, no Removals may be transported via the front foyer.

29.3 An owner of a lot must pay to the Owners Corporation an amount of \$500.00 (or any other amount the Executive Committee may decide from time to time) which is:

- (a) to be held by the Owners Corporation as a bond during the Removal or delivery of goods and furniture through the Common Property areas and lifts;



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- (b) to be applied by the Owners Corporation towards the cost of rectifying any damage to any part of the Common Property including the foyers and lifts and the cost of providing any necessary security arrangements; and
- (c) to be refunded to the owner in whole, if any part is applied pursuant to this by-law, then only as to the balance.

## **30 GENERAL EXCLUSIVE USE RIGHTS**

- 30.1 The owners or occupiers of each lot have the right to exclusive use and enjoyment of any service that exclusively services their individual lot that are located in and forming part of the Common Property ("Exclusive Services").
- 30.2 The owners or occupiers are responsible, at their cost, for the ongoing repair and maintenance of the Exclusive Services.
- 30.3 In the event that the owners or occupiers or persons authorised by an owner or occupier fails to maintain the Exclusive Services in accordance with this By-law, the Original Owner during the initial period or the Owners Corporation following the expiration of the initial period, or any person authorised by it, may undertake any works necessary to maintain the Exclusive Services to be in keeping with this by-law. The costs of the Original Owner or Owners Corporation, as the case may be, undertaking such works shall be a debt payable by the owner to the Original Owner or Owners Corporation, as the case may be, on demand.

## **31. LOADING DOCK**

- 31.1 An owner or occupier of a lot must not make any deliveries to the loading dock on the Common Property unless a prior appointment has been made with the Owners Corporation. The Owners Corporation may, from time to time, make rules and impose conditions in relation to the use of any loading dock forming part of the Common Property, including in relation to the maximum height and weight of vehicles and the hours in which access is permitted.

## **32. AGREEMENT WITH THE CARETAKER**

- 32.1 In addition to its powers under the Management Act, the Owners Corporation has the power to appoint and enter into agreements with the Caretaker to provide management and operational services.
- 32.2 The duties of the Caretaker under an agreement between it and the Owners Corporation may include, without limitation:
  - (a) caretaking, supervising and servicing Common Property;
  - (b) supervising the cleaning, repair, maintenance, renewal or replacement of Common Property;
  - (c) arranging for the inspection and certification of plant and equipment as required by laws; and

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- (d) providing services to the Owners Corporation, owners and occupiers including, without limitation, the services of a handyman and cleaning services;
- (e) supervising employees and contractors of the Owners Corporation;
- (f) doing anything else that the Owners Corporation or Strata Manager agrees is necessary for the operation and management of the Building.

32.3 The Owners Corporation must accept the provisions of a Caretaking Agreement entered into by the Original Owner and cannot terminate that Caretaking Agreement, except in accordance with its terms.

32.4 If there is no existing Caretaking Agreement as contemplated by by-law 32.3, or at the expiration of the term of the Caretaking Agreement referred to in by-law 32.3, the Owners Corporation may enter into a caretaking agreement with a Caretaker. Any such caretaking agreement must include:

- (a) the remuneration of the Caretaker for the term; and
- (b) the duties of the Caretaker may be those listed in by-law 32.2.

and otherwise be on terms and conditions reasonably determined by the Owners Corporation.

32.5 The Owners Corporation is not obliged to appoint the same Caretaker originally appointed by the Original Owner (if any).

## **33. BUILDING MANAGEMENT AND AN OWNER OR OCCUPIER OF A LOT**

33.1 An owner or occupier of a lot must not:

- (a) Interfere with or stop the Caretaker or the Strata Manager performing their obligations or exercising their rights under their agreements with the Owners Corporation; or
- (b) Interfere with or stop the Caretaker or the Strata Manager using such parts of the Common Property as the Owners Corporation permits them to use from time to time.

## **34. EXCLUSIVE USE RIGHTS TO USE MECHANICAL CAR PARKING STACKING SYSTEM**

34.1 An owner or occupier of a lot set out in the left hand column in the Schedule below (the "MCSS Benefited Lot Owner") has, in respect of the relevant area shown in the sketch attached as Attachment "A" to these by-laws and marked with the same notation set out in the right hand column in the Schedule below (the "MCSS Exclusive Use Area"), a right of exclusive use to park or stand a motor or other vehicle in allocated bay corresponding therewith in the mechanical car parking stacking system ("MCSS") situated on the basement level of the Building.

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## Schedule

<b>Lot Benefited</b>	<b>MCSS Exclusive Use Area</b>
1	Upper Bay in Exclusive Use Area "C"
2	Upper Bay in Exclusive Use Area "D"
3	Lower Bay in Exclusive Use Area "B"
5	Lower Bay in Exclusive Use Area "D"
8	Upper Bay in Exclusive Use Area "A" and Upper Bay in Exclusive Use Area "B"
10	Lower Bay in Exclusive Use Area "C"
11	Lower Bay in Exclusive Use Area "A"

34.2 The terms on which the exclusive use area is granted to the MCSS Benefited Lot Owner are as follows:

- (a) The MCSS Benefited Lot Owner has exclusive use of an allocated bay allocated to the Lot Benefited and situated in the relevant MCSS Exclusive Use Area.
- (b) The MCSS Benefited Lot Owner can only use the allocated bay situated in the relevant MCSS Exclusive Use Area to park a Permitted Vehicle. An MCSS Benefited Lot Owner cannot use nor permit anyone else to use the allocated bay situated in the relevant MCSS Exclusive Use Area for any other purpose.
- (c) For the purposes of this by-law 34, "Permitted Vehicle" means a car with the dimensions outlined in the operating instructions lodged with the Owners Corporation for the MCSS Model 440 - 185 / 180 and Model 440 - 200 / 195.
- (d) The MCSS is intended to operate as follows:
  - (i) a user drives their car front end first onto their allocated bay in the MCSS entry module within the relevant MCSS Exclusive Use Area, steps out of their car and then exits the module, then, by use of a special security key or key pad instructs the MCSS to park their car; and
  - (ii) a MCSS Benefited Lot Owner needs to operate the special security key or keypad to retrieve their car which should be returned to the entry module of the relevant MCSS Exclusive Use Area.
- (e) The MCSS Benefited Lot Owner may only use the MCSS situated in the relevant MCSS Exclusive Use Area:
  - (i) to store or retrieve a Permitted Vehicle;
  - (ii) if the Permitted Vehicle is driven in front forward;
  - (iii) if the aerial of the Permitted Vehicle is not extended; and

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- (iv) if the MCSS Benefited Lot Owner has paid all moneys payable by it under these by-laws.
- (f) When an MCSS Benefited Lot Owner cannot use the MCSS situated in the relevant MCSS Exclusive Use Area, they must immediately remove their car from their allocated bay so as not to interfere with the use of the MCSS by others.
- (g) The MCSS Benefited Lot Owner must ensure that no animals or persons are in the vehicle whilst it is in the MCSS Exclusive Use Area, except for the driver driving the car into the MCSS, the driver standing next to the controls to operate the MCSS so as to direct the storage or retrieval of their car, and the driver getting in their car after retrieving from the MCSS to drive it out of the MCSS.
- (h) The MCSS Benefited Lot Owner must comply with all directions of the manufacturer of the MCSS and the Owners Corporation as to the proper, efficient and safe use of the MCSS and they must have reasonable regard to the rights of other users to use the MCSS situated in their relevant MCSS Exclusive Use Area to park stand and retrieve their Permitted Vehicles there from.
- (i) The MCSS Benefited Lot Owner must give access to the Owners Corporation to their allocated bay and to the relevant MCSS Exclusive Use Area so that the Owners Corporation can comply with its obligations under the by-laws and the Act including without limitation for the purposes of maintaining and repairing the Common Property;
- (k) The MCSS Benefited Lot Owner must indemnify the Owners Corporation and each other MCSS Benefited Lot Owner having use of the MCSS in the relevant MCSS Exclusive Use Area for any claims damage liability or loss suffered by the Owners Corporation or by another MCSS Benefited Lot Owner as a result of any willful or negligent non-compliance with this by-law 34 by the MCSS Benefited Lot Owner (or any person permitted by the MCSS Benefited Lot Owner to use their allocated bay in the relevant MCSS Exclusive Use Area);
- (l) The MCSS Benefited Lot Owner must indemnify the Owners Corporation against all claims damage liability or loss caused in the exercise by the MCSS Benefited Lot Owner of rights under this By-Law or using the MCSS equipment.

## 34.3 The Owners Corporation must:

- (a) properly maintain and keep in a state of good and serviceable repair the MCSS Exclusive Use Area including the MCSS and any services or equipment which are exclusively required for the operation of the MCSS; and
- (b) as and when reasonably required, renew or replace the MCSS and any services or equipment which are exclusively required by the MCSS; and

- (c) make structural repairs to and replace the MCSS Exclusive Use Areas as and when reasonably required; and
- (d) use reasonable endeavours to ensure that the MCSS is supplied with any necessary power, and the cost of that power will be treated as a recurrent expense payable out of the administrative fund of the Owners Corporation; and
- (e) at its own cost do all other things reasonably required of it to ensure the efficient operation of the MCSS for the benefit of the MCSS Benefited Lot Owners of the relevant MCSS Exclusive Use Area, including without limitation, the maintenance of services shared with the MCSS such as electricity, and the issue of notices to any person who may not be using the MCSS in accordance with this by-law 34;
- (f) at its own cost, obtain and maintain public liability insurance in the name and in the names of the MCSS Benefited Lot Owners and for all of the MCSS Exclusive Use Areas for no lesser sum and upon conditions no less favourable to the insured than any public liability insurance maintained for other parts of the Common Property.

34.4 The Owners Corporation may amend or repeal this by-law only:

- (i) with the prior written consent of the owners of the Lot Benefited; and
- (ii) in accordance with a special resolution.

34.5 For the purposes of this by-law 34:

- (a) the expression "occupier" means and includes lessees, licensees or other persons to whom the right to use and enjoy exclusive possession has been granted by the owners of the Lot Benefited, provided always that the owner having the benefit of the rights of exclusive use granted under this by-law ensures that the occupier fully and promptly complies with each and every obligation under this by-law as if the occupier was the owner of the relevant Lot Benefited; and
- (b) if there is more than an owner of the Lot Benefited, only the owner first named on the strata roll may exercise the rights in respect of the allocated bay allocated to the MCSS Benefited Lot Owner under this by-law unless all owners of the Lot Benefited give the Owners Corporation a written direction that a different specified co-owner is instead to exercise those rights.

**36. EXCLUSIVE USE AREA "I" FOR LOT 11 FOR STORAGE**

35.1 The owners and occupiers for the time being of Lot 11 have rights of exclusive use of the area situated on the ground floor of the building adjacent to Lot 11 and as shown in the sketch attached as Attachment "A" to these by-laws and marked "Exclusive Use Area "I" thereon, for the purposes of storage.

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ePlan

**35.2 Rights of exclusive use of Exclusive Use Area "I" are granted to the owners and occupiers of Lot 11 subject to the following:**

- (a) the owners and occupiers of Lot 11 must not:
  - (i) leave any garbage or rubbish on Exclusive Use Area "I"; and
  - (ii) despite the provisions of by-law 12, permit Exclusive Use Area "I" to be used to store any hazardous, dangerous or inflammable substance, chemical, liquid or gas or other inflammable material except where such substance, chemical, liquid, gas or material is used in the ordinary course of the business use approved by Mosman Council for Lot 11, in which case such substances, chemicals, liquids, gases or other materials are to be stored as safely as possible in Exclusive Use Area "I"; and
  - (iii) otherwise permit Exclusive Use Area "I" to be used in any way so as to constitute a nuisance or annoyance;
- (b) the owners and occupiers of Lot 11 will be liable for any damage caused to any part of the Building as a result of them failing to properly observe and perform the terms of this exclusive use by-law;
- (c) the owners and occupiers of Lot 11 must indemnify the Owners Corporation from and against any loss or damage that may be suffered as a result of the owner's and occupier's rights of exclusive use pursuant to this by-law 35;
- (d) the owners and occupiers of Lot 11 must, at its own expense obtain all necessary approvals from Mosman Council and any other relevant consent authority for use of Exclusive Use Area "I" should such approvals be necessary or required;
- (e) the owners of Lot 11 must effect insurance policies covering liability for damage to property, injury or death of any person in respect of the use of Exclusive Use Area "I", including without limitation workers compensation insurance as required by law and public liability insurance for an amount of not less than \$10,000,000.00 for any single incident.

**35.3 The owner and occupier of Lot 11 shall be responsible at their own cost and expense:**

- (a) for the proper maintenance of and keeping in a state of good and serviceable repair the internal surfaces of walls floors and ceilings of Exclusive Use Area "I", and shall as and when required, repaint the walls to reinstate them to the condition they were in when this by-law was granted; and
- (b) to make good any damage caused to Exclusive Use Area "I", the Common Property or to the Building as a result of the owner and occupier exercising its rights under this by-law 35.

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- 35.4 The owner and occupier of Lot 11 shall permit the Owners Corporation and any employee or contractor appointed by it to access Exclusive Use Area "I" for the purposes of carrying out maintenance of the Building and any Common Property plant or other structures located on or near Exclusive Use Area "I" of the Building provided that the Owners Corporation gives the owner not less than seven days (7) written notice that it requires access to the Exclusive Use Area "I" (except in case of an emergency in which event no notice is required).
- 35.5 The Owners Corporation may make, amend or repeal this by-law 35 only:
- (a) with the written consent of the owners of Lot 11; and
  - (b) in accordance with a special resolution.
- 35.6 In this by-law 35, "occupiers" means and includes lessees, licensees or other persons to whom the right of use and enjoy exclusive possession or occupation has been granted by the owners of Lot 11.

**36. EXCLUSIVE USE AREAS "J" AND "K", FOR LOT 11 FOR SIGNAGE**

- 36.1 The owners and occupiers for the time being of Lot 11 have rights of exclusive use of the following areas:
- (a) the external face of the boundary wall on the western side of the Building as shown in the sketch attached as Attachment "A" to these by-laws and marked "Exclusive Use Area "J" thereon; and
  - (b) the external face of the boundary wall on the eastern side of the Building as shown in the sketch attached as Attachment "A" to these by-laws and marked "Exclusive Use Area "K" thereon; and
  - (c) those parts of the external walls of the Building directly behind the external face of the boundary walls comprising Exclusive Use Areas "J" and "K"
- for the purposes of affixing, erecting, installing, and maintaining signage including without limitation, the installation and maintenance of advertising hoardings or other similar structures.
- 36.2 The Owners Corporation shall, if required by the owner or occupier of Lot 11, endorse its consent to and sign all applications and other documents reasonably required by the owner or occupier of Lot 11 to be signed by the Owners Corporation in connection with the affixing, erecting, installation or maintenance of any signage (including without limitation any application for consent to Mosman Council under by-law 36.3(a)), on the basis that the owners and occupiers of Lot 11 shall comply with their obligations under this by-law 36.
- 36.3 Rights of exclusive use over the areas referred to in by-law 36.1 are granted to the owners and occupiers of Lot 11 subject to the following:

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- (a) before affixing, erecting or installing any signage (including without limitation any advertising hoardings or other similar structures) the owner or occupier of Lot 11 must obtain, at the owner's or occupier's expense, all necessary consents from Mosman Council and any other relevant authority required for the affixing, erecting or installation of any such signage and provide a copy of the consent to the Owners Corporation; and
- (b) when affixing, erecting, installing or maintaining any signage, the owner and occupier of Lot 11 must:
  - (i) ensure that none of the alterations made to the Common Property authorised by this by-law 36 will result in a loss of structural support to any part of the Building; and
  - (ii) not damage any service lines or pipes or interrupt any services; and
  - (iii) carry out the work in a proper and workmanlike manner without undue delay and in accordance with all consents from Mosman Council and any other relevant authority; and
  - (iv) use qualified and reputable contractors to carry out any works; and
  - (v) use all reasonable endeavours to cause as little disruption to owners and occupiers of other lots in the Strata Scheme as possible; and
  - (vi) use all reasonable endeavours to protect and keep free from damage the surrounding façade of the Building and the surrounding Common Property; and
  - (vii) repair and make good all damage caused to the surrounding façade of the Building and the surrounding Common Property, and repair and make good any and all damage caused to the Common Property or to another owner or occupier's lot; and
  - (viii) not permit Exclusive Use Areas "J" or "K" to be used in any way so as to constitute a nuisance or annoyance; and
- (c) the owners and occupiers of Lot 11 will be liable for any damage caused to any part of the Building as a result of them failing to properly observe and perform the terms of this exclusive use by-law 36;
- (d) the owners and occupiers of Lot 11 must indemnify the Owners Corporation from and against any loss or damage that may be suffered as a result of the owner's and occupier's rights of exclusive use pursuant to this by-law 36;



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- (e) the owners of Lot 11 must effect insurance policies covering liability for damage to property, injury or death of any person arising from or in connection with the use of Exclusive Use Areas "J" or "K" by the owners or occupiers of Lot 11 under this by-law 36, including without limitation workers compensation insurance as required by law and public liability insurance for an amount of not less than \$10,000,000.00 for any single incident.
- 36.4 The owner and occupier of Lot 11 shall be responsible at their own cost and expense:
- (a) for the proper maintenance of and keeping in a state of good and serviceable repair the external surfaces of the walls of Exclusive Use Areas "J" and "K"; and
  - (b) to make good any damage caused to Exclusive Use Areas "J" or "K", the Common Property or to the Building as a result of the owner and occupier exercising its rights under this by-law 36.
- 36.5 The owner and occupier of Lot 11 agrees that it shall, when Exclusive Use Areas "J" or "K" areas are not being used for signage purposes set out in this by-law 36, restore the external walls as required to reinstate them to good condition and generally to the same appearance they were in when this by-law was granted.
- 36.6 The owner and occupier shall not by mere non-usage of the rights in this by-law 36 be deemed to have abandoned any of its rights granted under this by-law 36.
- 36.7 The Owners Corporation may make, amend or repeal this by-law 36 only:
- (a) with the written consent of the owners of Lot 11; and
  - (b) in accordance with a special resolution.
- 36.8 In this by-law 36, "occupiers" means and includes lessees, licensees or other persons to whom the right to use and enjoy exclusive possession or occupation has been granted by the owners of Lot 11.

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## DICTIONARY

**Air Conditioning Equipment** means the air conditioner inside a lot or on the roof of the Building and includes air conditioning plant and equipment, pipes, wires, cables, vents and ducts servicing air conditioning plant and equipment.

**Building** means the building and improvements on the land situated at 572-574 Military Road Mosman NSW and comprising a strata titled commercial, retail and residential apartment building.

**Caretaker** means a caretaker appointed by the Owners Corporation to provide management and operation services;

**Common Property** means those areas of the Strata Scheme that are not comprised in any lot.

**Executive Committee** means the executive committee of the Owners Corporation.

**Management Act** means the Strata Schemes Management Act, 1996 as amended.

**Manager** means a strata managing agent appointed in respect of the Strata Scheme.

**Original Owner** means D & T Rahme Pty Limited ACN 082 513 835 and Green Street Pty Limited ACN 095 726 006, being the registered proprietors of the land comprised in the Strata Scheme before registration of the strata plan creating same.

**Owners Corporation** means the Owners Corporation formed on registration of the strata scheme for the building.

**Strata Scheme** means the strata scheme created on registration of the strata plan accompanying these by-laws.

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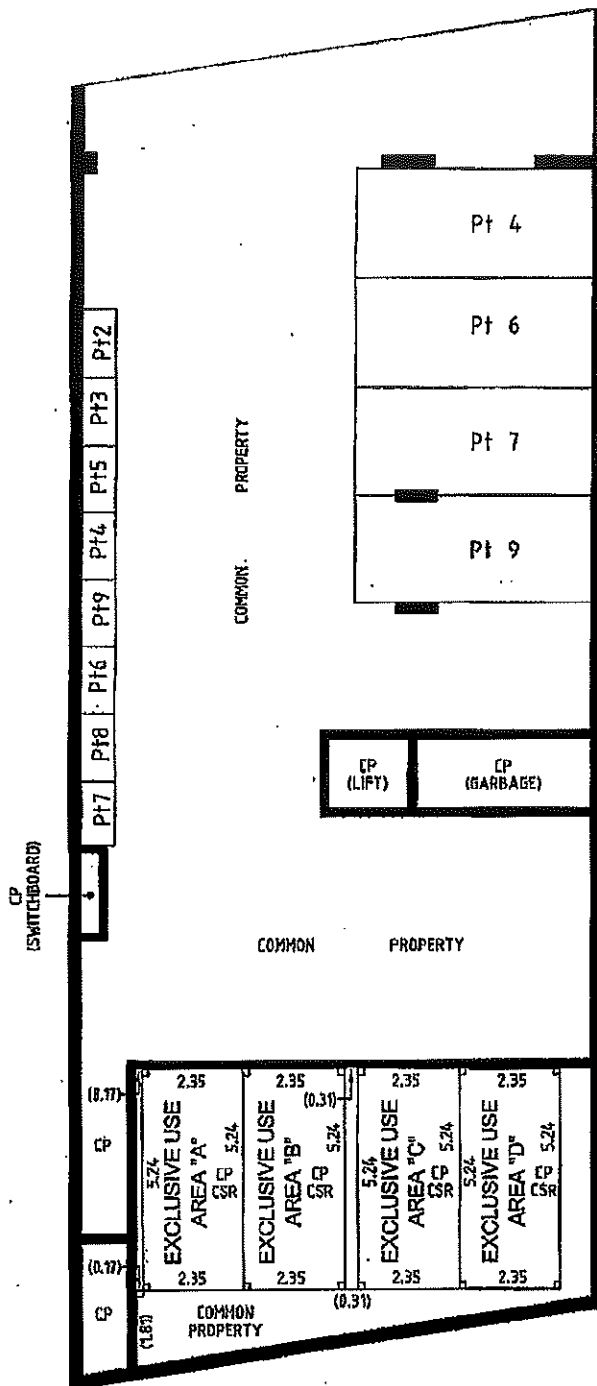
ePlan

LGA: Mosman  
 Locality: Mosman  
 Not to scale

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**SKETCH**  
 SHOWING PART OF COMMON PROPERTY  
 FOR EXCLUSIVE USE WITHIN STRATA SCHEME

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**NOTES:**

- └─ DENOTES RIGHT ANGLE
- CP DENOTES COMMON PROPERTY
- CSR DENOTES CAR STACKER
- PFC DENOTES PROLONGATION FACE OF COLUMN OR WALL

**BASEMENT**

**USHER & COMPANY**  
 Surveying & Land Development Consultants

Usher & Company Pty Limited ABN 70 128 414 602  
 PO Box 1189, Chatswood NSW 2067 Phone: 02 9411 8166 Fax: 02 9411 8177

"A"

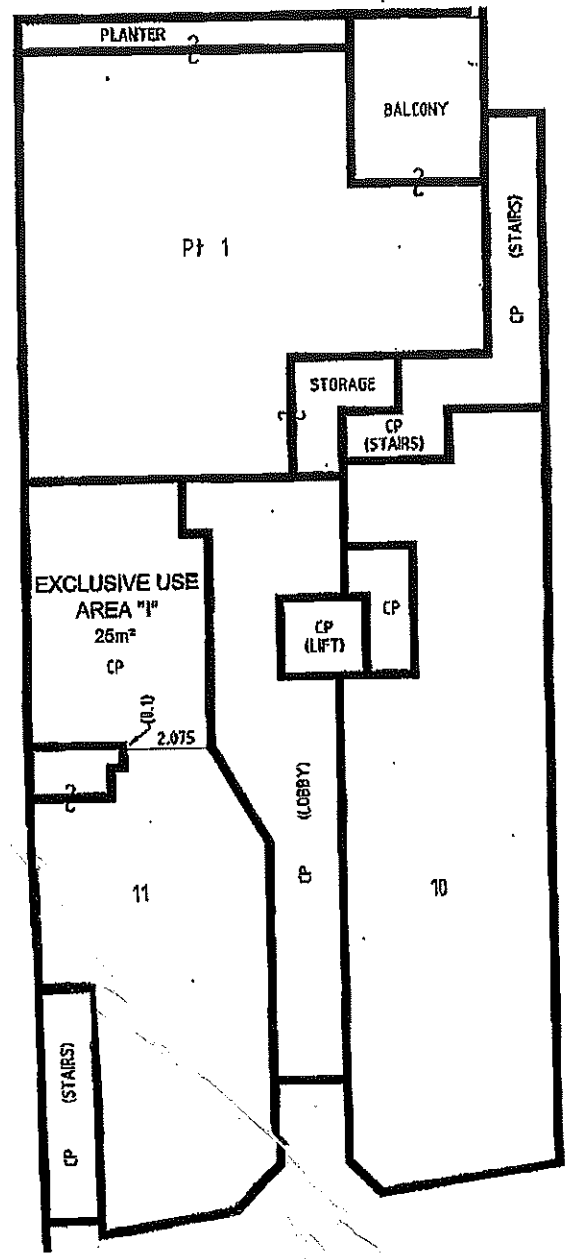
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LGA: Mosman  
Locality: Mosman  
Not to scale

### SKETCH

SHOWING PART OF COMMON PROPERTY  
FOR EXCLUSIVE USE WITHIN STRATA SCHEME

## SP85065



GROUND LEVEL

NOTES:  
CP DENOTES COMMON PROPERTY

**USHER & COMPANY**  
Surveying & Land Development Consultants

Usher & Company Pty Limited ABN 70 126 114 602  
PO Box 1189, Chiswood NSW 2057 Phone: 02 9411 8186 Fax: 02 9411 8177

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ePlan

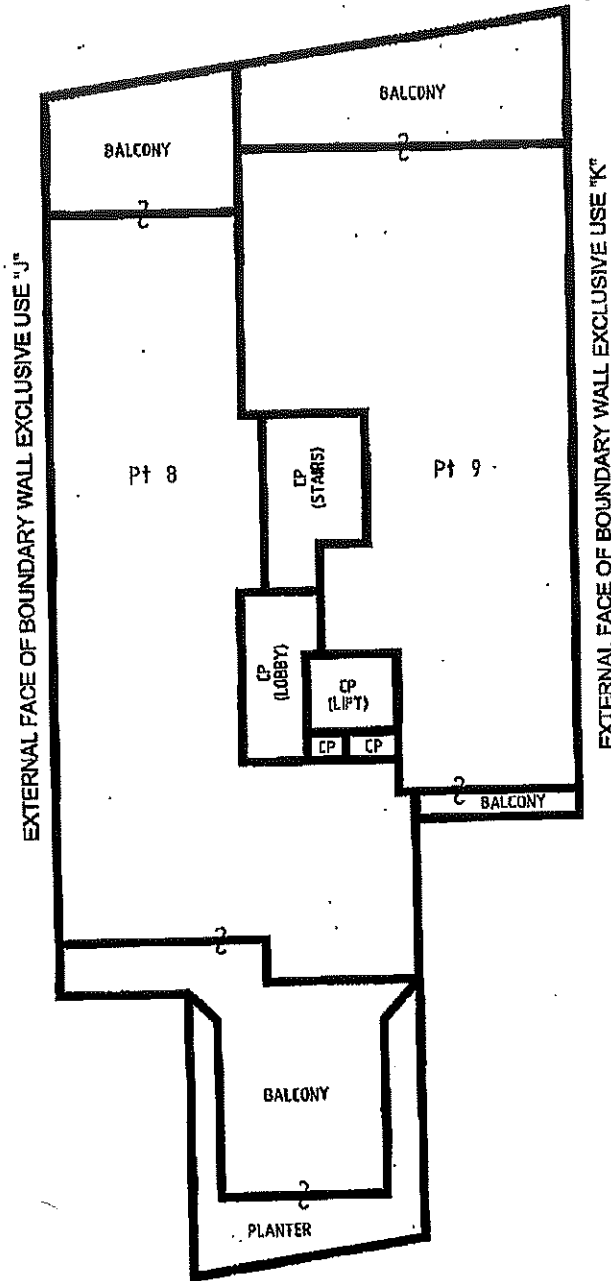
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Locality: Mosman  
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# SKETCH

SHOWING PART OF COMMON PROPERTY  
FOR EXCLUSIVE USE WITHIN STRATA SCHEME

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LEVEL 3

NOTES:

CP DENOTES COMMON PROPERTY

**USHER & COMPANY**  
Surveying & Land Development Consultants

Usher & Company Pty Limited ABN 70 128 414 602  
PO Box 1199, Chatswood NSW 2057 Phone: 02 9411 8186 Fax: 02 9411 8177

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## EXECUTION PAGE

**EXECUTED by D & T RAHME PTY  
LIMITED ACN 082 513 835** in accordance  
with section 127 of the Corporations Act:



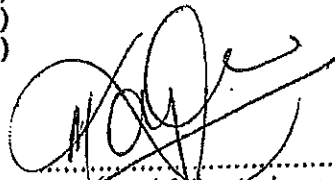
.....  
Signature of director

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Signature of director/secretary

.....  
Name (please print)

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Name (please print)

**EXECUTED by GREENE STREET PTY  
LIMITED ACN 095 726 006** in accordance  
with section 127 of the Corporations Act:



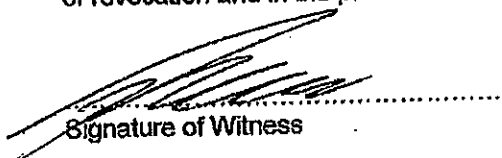

.....  
Signature of director

.....  
Signature of director/secretary

.....  
Name (please print)

.....  
Name (please print)

**SIGNED SEALED AND DELIVERED**  
for and on behalf of **ST GEORGE BANK  
LIMITED** by its duly authorised Attorney  
under registered power of attorney  
Book 4299 No 332 of  
which the attorney has received no notice  
of revocation and in the presence of:

  
.....  
Signature of Witness  
.....  
Signature of Attorney  
ROBERT RAMONDETTA  
TIER THREE ATTORNEY  
.....  
Name of Attorney (please print)

.....  
Name of Witness (please print)

.....  
Address of Witness (please print)

REGISTERED  11.3.2011

Form: 15CH  
Release: 2.0

**CONSOLIDATION/  
CHANGE OF BY-LAWS**



New South Wales

Strata Schemes Management Act  
Real Property Act 1900

**AP497067M**

**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.

(A) TORRENS TITLE	For the common property		
	Folio Identifier CP/SP85065		
(B) LODGED BY	Document Collection Box  <b>1W</b>	Name, Address or DX, Telephone, and Customer Account Number if any	CODE  <b>CH</b>
		Strata Specialist Lawyers Tel: (02) 9089 8706 GPO Box 1378 SYDNEY NSW 2001 Reference: CC:20191620:SP85065	

- (C) The Owners-Strata Plan No. 85065 certify that a special resolution was passed on 21/8/2019
- (D) pursuant to the requirements of section 141 of the Strata Schemes Management Act 2015, by which the by-laws were changed as follows—
- (E) Repealed by-law No. NOT APPLICABLE  
Added by-law No. 37  
Amended by-law No. NOT APPLICABLE  
as fully set out below:  
See Annexure "A"

(F) A consolidated list of by-laws affecting the above mentioned strata scheme and incorporating the change referred to at Note (E) is annexed hereto and marked as Annexure "A"

(G) The seal of The Owners-Strata Plan No. 85065 was affixed on 23/8/2019 in the presence of the following person(s) authorised by section 273 Strata Management Act 2015 to attest the affixing of the seal:

Signature:

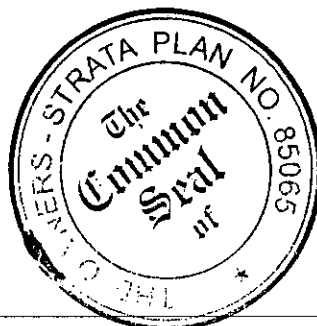
Name: **Michael Vumbaca**

Authority: **Strata Manager**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Authority: \_\_\_\_\_



**STRATA SCHEME NO 85065**  
**ANNEXURE "A" TO CONSOLIDATION/CHANGE OF BY-LAWS**

**CONSOLIDATED BY-LAWS**

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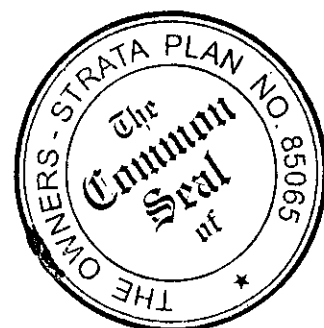
This is page 2 of a total of 56 pages and is Annexure "A" to the Consolidation of By-Laws/Change of By-Laws form. The seal of THE OWNERS – STRATA PLAN NO 85065 was affixed on the 23<sup>rd</sup> day of August 2019 in the presence of:

**Michael Vumbaca**

Names:.....

Signatures.....

Being the persons authorised by Section 273 of the *Strata Schemes Management Act 2015* to attest the affixing of the seal.





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**This is page 3 of a total of 56 pages and is Annexure "A" to the Consolidation of By-Laws/Change of By-Laws form. The seal of THE OWNERS – STRATA PLAN NO 85065 was affixed on the 23<sup>rd</sup> day of August 2019 in the presence of:**

**Names: .....**

**Signatures.....**

**.....**

**Being the persons authorised by Section 273 of the *Strata Schemes Management Act 2015* to attest the affixing of the seal.**

**1 Noise**

1.1 An owner or occupier of a lot (or any invitees of the owner or the occupier of a lot) must not create any noise on the parcel likely to interfere with the peaceful enjoyment of the owner or occupier of another lot or of any person lawfully using Common Property.

**2 Vehicles**

2.1 An owner or occupier of a lot (or any invitees of the owner or occupier of a lot) must not park or stand any motor vehicle or other vehicle on Common Property except with the written approval of the Owners Corporation.

**3 Obstruction of Common Property**

3.1 An owner or occupier of a lot (or any invitees of the owner or occupier of a lot) must not obstruct lawful use of Common Property by any person.

**4 Damage to Lawns and Plants on Common Property**

4.1 An owner or occupier of a lot (or any invitees of the owner or occupier of a lot) must not:

- (a) damage any lawn, garden, tree, shrub, plant or flower being part of or situated on Common Property, or
- (b) use for his or her own purposes as a garden any portion of the Common Property.

**5 Damage to Common Property**

5.1 An owner or occupier of a lot must not mark, paint, drive nails or screws or the like into, or otherwise damage or deface, any structure that forms part of the Common Property without the approval in writing of the Owners Corporation.

5.2 An approval given by the Owners Corporation under by-law 5.1 cannot authorise any additions to the Common Property.

5.3 By-law 5.1 does not prevent an owner or person authorised by the owner from installing:

- (a) any locking or other safety device for protection of the owner's lot against intruders; or
- (b) any screen or other device to prevent entry of animals or insects on the lot; or
- (c) any structure or device to prevent harm to children

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**Signatures.....**

**.....**

**Being the persons authorised by Section 273 of the *Strata Schemes Management Act 2015* to attest the affixing of the seal.**

provided always that all relevant building and fire safety codes and regulations are complied with.

5.4 Any such locking or safety device, screen, other device or structure referred to in by-law 5.3 must be installed in a competent and proper manner and must have an appearance, after it has been installed, in keeping with the appearance of the rest of the Building.

5.5 Despite by-law 5.1 and despite section 62 of the Management Act, the owner of a lot must:

(a) maintain and keep in a state of good and serviceable repair any installation or structure referred to in by-law 5.3 that forms part of the Common Property and that services the lot; and

(b) repair any damage caused to any part of the Common Property by the installation or removal of any locking or safety device, screen, other device or structure referred to in by-law 5.3 that forms part of the Common Property and that services the lot.

## 6 Behaviour of Owners and Occupiers

6.1 An owner or occupier of a lot (or any invitees of the owner or occupier of a lot) when on Common Property must be adequately clothed and must not use language or behave in a manner likely to cause offence or embarrassment to the owner or occupier of another lot or to any person lawfully using Common Property.

## 7 Children Playing on Common Property in Building

7.1 An owner or occupier of a lot (or any invitees of the owner or occupier of a lot) must not permit any child of whom the owner or occupier has control to play on Common Property within the Building or, unless accompanied by an adult exercising effective control, to be or to remain on Common Property comprising a laundry, car parking area or other area of possible danger or hazard to children.

## 8 Behaviour of Invitees

8.1 An owner or occupier of a lot must take all reasonable steps to ensure that invitees of the owner or occupier do not behave in a manner likely to interfere with the peaceful enjoyment of the owner or occupier of another lot or any person lawfully using Common Property.

## 9 Depositing Rubbish and Other Materials on Common Property

This is page 5 of a total of 56 pages and is Annexure "A" to the Consolidation of By-Laws/Change of By-Laws form. The seal of THE OWNERS – STRATA PLAN NO 85065 was affixed on the 23<sup>rd</sup> day of August 2019 in the presence of:

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Signatures.....

.....

Being the persons authorised by Section 273 of the *Strata Schemes Management Act 2015* to attest the affixing of the seal.

9.1 An owner or occupier of a lot must not deposit or throw on the Common Property any rubbish, dirt, dust or other material likely to interfere with the peaceful enjoyment of the owner or occupier of another lot or any person lawfully using the Common Property.

## **10 Drying of Laundry Items**

10.1 An owner or occupier of a lot must not, except with the consent in writing of the owners Corporation, hang any washing, towel, bedding, clothing or other article on any part of the parcel in such a way as to be visible from outside the Building.

## **11 Cleaning Windows and Doors**

11.1 An owner or occupier of a lot must keep clean all glass in windows, doors and balustrading on the boundary of the lot, including so much thereof as is Common Property and must report any breakages to the Owners Corporation.

## **12 Storage of Inflammable Liquids and Other Substances and Materials**

12.1 An owner or occupier of a lot must not, except with the approval in writing of the Owners Corporation, use or store on the lot or on the Common Property any inflammable chemical, liquid or gas or other inflammable material.

12.2 This by-law does not apply to chemicals, liquids or gases or other material used or intended to be used for domestic purposes, or any chemical, liquid, gas or other material in a fuel tank of a motor vehicle or internal combustion engine.

## **13 Moving Furniture and Other Objects on or Through Common Property**

13.1 Subject to by-law 29, an owner or occupier of a lot must not transport any furniture or large objects through or on Common Property within the Building unless sufficient notice has first been given to the Executive Committee or the Manager so as to allow a representative of the Owners Corporation to be present at the time when the owner or occupier does so.

## **14 Floor Coverings**

14.1 An owner of a lot must ensure that all floor space within the lot is covered or otherwise treated to an extent sufficient to prevent the transmission from the floor space of noise likely to disturb the peaceful enjoyment of the owner or occupier of another lot.

14.2 By-law 14.1 does not apply to floor space comprising a kitchen, laundry, lavatory or bathroom.

**This is page 6 of a total of 56 pages and is Annexure "A" to the Consolidation of By-Laws/Change of By-Laws form. The seal of THE OWNERS – STRATA PLAN NO 85065 was affixed on the 23<sup>rd</sup> day of August 2019 in the presence of:**

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**Signatures.....**

**.....**

**Being the persons authorised by Section 273 of the *Strata Schemes Management Act 2015* to attest the affixing of the seal.**

## 15 Garbage Disposal

15.1 An owner of a lot:

- (a) must dispose of recyclable waste by placing it in an appropriate container in the garbage room located on the Common Property;
- (b) must ensure that before refuse is placed in any receptacle it is securely wrapped or, in the case of tins or other containers, completely drained;
- (c) must promptly remove any thing which the owner, occupier or garbage collector may have spilled from the receptacle and must take action as may be necessary to clean the area within which that thing was spilled, and
- (d) must comply with the directions from time to time of the Owners Corporation as to the manner of disposal of garbage.

15.2 The owners or occupiers of any commercial and/or retail lots in the Building must arrange and pay for their own garbage and waste removal from the Building and must:

- (a) comply with all requirements of Mosman Council and any other relevant authority regarding storage, collection and removal of waste; and
- (b) to the extent that the following obligations do not conflict with any obligations under by-law 15.2(a), must:
  - (i) ensure that before refuse is placed in any receptacle it is securely wrapped or, in the case of tins or other containers, completely drained; and
  - (ii) promptly remove any thing which the owner, occupier or garbage collector may have spilled from the receptacle and must take such action as may be necessary to clean the area within which that thing was spilled; and
  - (iii) comply with the directions from time to time of the Owners Corporation as to the manner of disposal of garbage.

15.3 Owners and occupiers of lots must use the garbage room designated in the basement level of the Building.

## 16 Keeping of Animals

This is page 7 of a total of 56 pages and is Annexure "A" to the Consolidation of By-Laws/Change of By-Laws form. The seal of THE OWNERS – STRATA PLAN NO 85065 was affixed on the 23<sup>rd</sup> day of August 2019 in the presence of:

Names: .....

Signatures.....

.....

Being the persons authorised by Section 273 of the *Strata Schemes Management Act 2015* to attest the affixing of the seal.

- 16.1 Subject to section 49(4) of the Management Act, an owner or occupier of a lot must not keep any animal (except one small dog or one cat or small caged bird or fish kept in a secure aquarium on the lot) on the lot or the Common Property.
- 16.2 If an owner or occupier of a lot keeps a small dog, cat or small caged bird on the lot, then the owner or occupier must:
  - (a) notify the Owners Corporation that the animal is kept on the lot; and
  - (b) keep the animal within the lot; and
  - (c) carry the animal when it is on the Common Property; and
  - (d) take any action that is necessary to clean all areas of the lot or the Common Property that are soiled or damaged by the animal.
- 16.3 Subject to section 49(4) of the Management Act, an owner or occupier of any commercial and/or retail lot is not permitted to keep any animal on the lot or the Common Property.
- 16.4 Despite any other provision of this by-law 16, on no account is an owner or occupier of a lot permitted to keep any unregistered dog or any dog which is:
  - (a) a pit bull terrier, Japanese tosa or other outcross; or
  - (b) prohibited from importation into Australia; or
  - (c) declared to be dangerous under the *Companion Animals Act 1998* from time to time.

## 17 Appearance of Lot

- 17.1 The owner or occupier of a lot must not, except with the written consent of the Owners Corporation, maintain within the lot anything visible from outside the lot that, when viewed from outside the lot, is not in keeping with the rest of the Building.
- 17.2 By-law 17.1 does not apply to the hanging of any washing, towel, bedding, clothing or other article as prohibited by by-law 10.

## 18 Notice Board

- 18.1 The owners Corporation must cause a notice board to be affixed to some part of the Common Property.

## 19 Change in Use of Lot to be Notified

This is page 8 of a total of 56 pages and is Annexure "A" to the Consolidation of By-Laws/Change of By-Laws form. The seal of THE OWNERS – STRATA PLAN NO 85065 was affixed on the 23<sup>rd</sup> day of August 2019 in the presence of:

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Signatures.....

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Being the persons authorised by Section 273 of the *Strata Schemes Management Act 2015* to attest the affixing of the seal.

19.1 An owner or occupier of a lot must notify the Owners Corporation if the owner or occupier changes the existing use of the lot in a way that may affect the insurance premiums for the strata scheme (for example, if the change of use results in a hazardous activity being carried out on the lot, or results in the lot being used for commercial or industrial purposes rather than for residential purposes).

19.2 Nothing in this by-law should be construed as authorising any owner or occupier of any lot to change the use of his or her lot. Any change of use of a lot must comply with the requirements of Mosman Council and all other relevant all competent authorities, and with these by-laws.

## 20 Use of Carparking Spaces

20.1 An owner or occupier of a lot can only use the carparking space/s attached to or forming part of his or her lot (if any) for the purposes of parking motor vehicles.

20.2 An owner or occupier of a lot may not use any power point located within the carparking space attached to or forming part of his or her lot (if any) to power any electrical equipment on a continuing basis. These power sources may only be used by owners or occupiers for small appliances and on a short-term basis.

20.3 The Owners Corporation has the right to use any power source located within a lot provided that use complies with the restrictions imposed by by-law 20.2.

20.4 The Owners Corporation has the right to disconnect any power source used by an owner or occupier in contravention of by-law 20.2.

20.5 An owner or occupier of a lot having a right of exclusive use to park over a relevant part of the Common Property in the mechanical car parking stacker system under by-law 34 must comply with the provisions of that by-law, in addition to the provisions set out in this by-law 20.

## 21 Curtains

21.1 Any curtain or blind in a window or door, which faces public or common areas, must have a backing coloured beige, off-white or cream unless otherwise authorised in writing by the Owners Corporation, must not be a vertical blind, must not detract from the visible amenity of the Building, and must be in keeping with the rest of the Building.

## 22 Air Conditioning in the Building

22.1 Despite any by-law, the owners for the time being of each lot (not being a utility lot) shall be entitled to the exclusive use of the air conditioning equipment and ducting described in

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**Names: .....**

**Signatures.....**

**.....**

**Being the persons authorised by Section 273 of the *Strata Schemes Management Act 2015* to attest the affixing of the seal.**

clause 22.2 of this by-law for that lot ("Air Conditioning Equipment") subject to the conditions that:

- (a) each owner shall be responsible for the running costs, the proper maintenance and keeping in a state of good and serviceable repair, the renewal and replacement of the Air Conditioning Equipment; and
- (b) each owner must maintain the Air Conditioning Equipment to a standard and if renewed or replaced of a type and colour, as may be prescribed by the Owners Corporation from time to time.

22.2 For the purposes of this by-law the Air Conditioning Equipment means the air conditioning plant and equipment for each unit in the ceiling space and ducting of the Common Property servicing and adjacent to that lot.

### **23 Hot Water Systems**

23.1 The owner of each lot has a special privilege to connect to and use the Common Property hot water system.

23.2 Each owner or occupier must:

- (a) pay the Owners Corporation according to regular accounts issued by the Owners Corporation that are based on metered readings or pay these accounts directly to AGL Gas Company Limited (AGL); and
- (b) give the Owners Corporation access to his or her lot to read any hot water meters located in that lot.

23.3 The Owners Corporation must:

- (a) operate, maintain, repair and replace the hot water system; and
- (b) give owners and occupiers regular accounts for their costs under this by-law 23.

23.4 The Owners Corporation may have agreements with third parties about the operation, maintenance, repair and replacement of the hot water system.

23.5 The Owners Corporation may discontinue the hot water service to an owner's lot if the owner or occupier has not paid the Owners Corporation's costs under this by-law 23.

23.6 The Owners Corporation does not have to reinstate the hot water service until the owner or occupier pays the cost.

**This is page 10 of a total of 56 pages and is Annexure "A" to the Consolidation of By-Laws/Change of By-Laws form. The seal of THE OWNERS – STRATA PLAN NO 85065 was affixed on the 23<sup>rd</sup> day of August 2019 in the presence of:**

**Names:** .....

**Signatures:** .....

.....

**Being the persons authorised by Section 273 of the *Strata Schemes Management Act 2015* to attest the affixing of the seal.**



## 24 Structural Support in the Building

- 24.1 An owner or occupier must not carry out any alteration to any part of the Building which renders structural support to any other part of the Building without first submitting copies of all relevant plans and approvals to the Owners Corporation and obtaining the written permission of the Owners Corporation to the proposed alteration. The consent of Mosman Council and any other relevant authority must also be obtained for the alteration and any works approved by the Owners Corporation must be carried out in accordance with the conditions, imposed by the consent authority and the Owners Corporation.

## 25 Commercial/Retail Lots

- 25.1 The owner or occupier for the time being of any commercial and/or retail lot (hereinafter individually and collectively referred to in this by-law 25 as the "Owner") is entitled at any time to make application to Mosman Council and any other relevant authority for consent to specific uses of a commercial and/or retail lot. The Owners Corporation and all other lot owners must consent to the lodgement of any application to Mosman Council by the Owner for the time being of a commercial and/or retail lot and they acknowledge that the sole consent authority for a specific use of a commercial and/or retail lot is Mosman Council.
- 25.2 If a specific use of a commercial and/or retail lot is approved, the Owners Corporation must also consent to the installation of any equipment required by statute for the conduct of the approved business within the commercial and/or retail lot.
- 25.3 Before the installation of any signage an Owner must obtain, at such Owner's expense, all necessary consents from Mosman Council and any other relevant authority required for such installation, and provide a copy of the consent to the Owners Corporation.
- 25.4 An Owner is permitted to place signs or any other form of advertising in or about the floor of the common property or on the footpath outside his or her commercial and/or retail lot, provided the Owner obtains, at the owner's expense, prior to placing the signs in or about the floor of the common property or on the footpath outside his or her commercial and/or retail lot, the written consent of the Owners Corporation and all necessary consents from Mosman Council and any other relevant authority.
- 25.5 In addition to the foregoing, and provided by-law 25.3 is complied with, an Owner is entitled to install an under awning signage light box or sign (if applicable) immediately outside that Owner's commercial and/or retail lot, at the Owners expense. The under awning signage light box or sign must be limited in size to 1.5 metres x 200mm x 100mm deep, and may contain a fluorescent light and translucent signage covers on each side.

**This is page 11 of a total of 56 pages and is Annexure "A" to the Consolidation of By-Laws/Change of By-Laws form. The seal of THE OWNERS – STRATA PLAN NO 85065 was affixed on the 23<sup>rd</sup> day of August 2019 in the presence of:**

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**Signatures.....**

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- 25.6 The terms on which use is granted to the Owner of a commercial and/or retail lot pursuant to this by-law 25 are:
- (a) the Owner will be liable for any damage caused to any part of the Building as a result of them failing to properly observe the terms of this by-law 25;
  - (b) the Owner must indemnify the Owners Corporation from and against any loss or damage that may be suffered as a result of an Owner's rights pursuant to this by-law 25; and
  - (c) the Owner is solely responsible for the installation, ongoing costs (including electricity), and repair and maintenance of signage relating to its respective lot.

## 26 Signage

- 26.1 Subject to by-laws 25 and 34, and except for the Original Owner, owners and occupiers must not, without the consent of the Owners Corporation, erect advertising or other signs in or on the exterior of the Building. This restriction includes, without limitation, signs that advertise that a lot is for sale or available for lease.
- 26.2 The rights granted to the Original owner pursuant to by-law 26.1 continue until the Original Owner completes the sale of all lots in the Building.
- 26.3 The owners corporation may make, amend or repeal this by-law only:
- (a) with the written consent of the Original Owner; and
  - (b) in accordance with a special resolution.
- 26.4 Subject to by-laws 25 and 34, no name, writing, drawing, sign board, plate, placard, signal, advertisement or illumination may be inscribed or exposed on or at any window or other part of the Building, and no article may be projected out of any window or over any balcony without the approval in writing of the Owners Corporation.

## 27 Parking and Deliveries

- 27.1 Owners and occupiers of lots must ensure that all deliveries, particularly deliveries by removalist trucks, are made from Common Property areas designated for such purpose in the Building.

## 28 Lifts

**This is page 12 of a total of 56 pages and is Annexure "A" to the Consolidation of By-Laws/Change of By-Laws form. The seal of THE OWNERS – STRATA PLAN NO 85065 was affixed on the 23<sup>rd</sup> day of August 2019 in the presence of:**

Names: .....

Signatures.....

.....

**Being the persons authorised by Section 273 of the *Strata Schemes Management Act 2015* to attest the affixing of the seal.**

28.1 The owners of the lots are entitled to exclusive use and enjoyment of the lift located in the Building and the Owners Corporation will be solely responsible for the cost of proper maintenance of the lift and keeping it in a state of good repair.

## 29 Moving of Certain Articles

29.1 An owner or occupier of a lot must not transport any goods, equipment, furniture or other large objects to and from lots and through Common Property ("Removals") unless:

- (a) A booking has been made with the Manager in writing within a reasonable time (at least 24 hrs) before Removals are carried out: -
  - (i) to book the lift;
  - (ii) to ensure that lift covers are in place;
  - (iii) to give notice of any necessary security arrangements; and
  - (iv) to notify any representative of the Owners Corporation (if considered necessary).
- (b) Removals may only be carried out on Mondays to Saturdays between the hours of 9.00am and 4.00pm or in accordance with the permitted hours determined by the Owners Corporation from time to time;
- (c) Removals are not carried out on Sundays;
- (d) All areas are protected from damage when carrying out Removals and all rubbish is removed from the strata scheme and its surrounds; and
- (e) All Removals are transported in the manner reasonably directed by the Owners Corporation or the Manager.

29.2 Despite clause 29.1, no Removals may be transported via the front foyer.

29.3 An owner of a lot must pay to the Owners Corporation an amount of \$500.00 (or any other amount the Executive Committee may decide from time to time) which is:

- (a) to be held by the Owners Corporation as a bond during the Removal or delivery of goods and furniture through the Common Property areas and lifts;

This is page 13 of a total of 56 pages and is Annexure "A" to the Consolidation of By-Laws/Change of By-Laws form. The seal of THE OWNERS – STRATA PLAN NO 85065 was affixed on the 23<sup>rd</sup> day of August 2019 in the presence of:

Names: .....

Signatures.....

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Being the persons authorised by Section 273 of the *Strata Schemes Management Act 2015* to attest the affixing of the seal.

- (b) to be applied by the Owners Corporation towards the cost of rectifying any damage to any part of the Common Property including the foyers and lifts and the cost of providing any necessary security arrangements; and
- (c) to be refunded to the owner in whole, if any part is applied pursuant to this by-law, then only as to the balance.

### **30 General Exclusive Use Rights**

- 30.1 The owners or occupiers of each lot have the right to exclusive use and enjoyment of any service that exclusively services their individual lot that are located in and forming part of the Common Property ("Exclusive Services").
- 30.2 The owners or occupiers are responsible, at their cost, for the ongoing repair and maintenance of the Exclusive Services.
- 30.3 In the event that the owners or occupiers or persons authorised by an owner or occupier fails to maintain the Exclusive Services in accordance with this By-law, the Original Owner during the initial period or the Owners Corporation following the expiration of the initial period, or any person authorised by it, may undertake any works necessary to maintain the Exclusive Services to be in keeping with this by-law. The costs of the Original Owner or Owners Corporation, as the case may be, undertaking such works shall be a debt payable by the owner to the Original Owner or Owners Corporation, as the case may be, on demand.

### **31 Loading Dock**

- 31.1 An owner or occupier of a lot must not make any deliveries to the loading dock on the Common Property unless a prior appointment has been made with the Owners Corporation. The Owners Corporation may, from time to time, make rules and impose conditions in relation to the use of any loading dock forming part of the Common Property, including in relation to the maximum height and weight of vehicles and the hours in which access is permitted.

### **32 Agreement with the Caretaker**

- 32.1 In addition to its powers under the Management Act, the Owners Corporation has the power to appoint and enter into agreements with the Caretaker to provide management and operational services.
- 32.2 The duties of the Caretaker under an agreement between it and the Owners Corporation may include, without limitation:
  - (a) caretaking, supervising and servicing Common Property;

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**Signatures.....**

**.....**

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- (b) supervising the cleaning, repair, maintenance, renewal or replacement of Common Property;
- (c) arranging for the inspection and certification of plant and equipment as required by laws; and
- (d) providing services to the Owners Corporation, owners and occupiers including, without limitation, the services of a handyman and cleaning services;
- (e) supervising employees and contractors of the Owners Corporation;
- (f) doing anything else that the Owners Corporation or Strata Manager agrees is necessary for the operation and management of the Building.

32.3 The Owners Corporation must accept the provisions of a Caretaking Agreement entered into by the Original Owner and cannot terminate that Caretaking Agreement, except in accordance with its terms.

32.4 If there is no existing Caretaking Agreement as contemplated by by-law 32.3, or at the expiration of the term of the Caretaking Agreement referred to in by-law 32.3, the Owners Corporation may enter into a caretaking agreement with a Caretaker. Any such caretaking agreement must include:

- (a) the remuneration of the Caretaker for the term; and
- (b) the duties of the Caretaker may be those listed in by-law 32.2.

and otherwise be on terms and conditions reasonably determined by the Owners Corporation.

32.5 The Owners Corporation is not obliged to appoint the same Caretaker originally appointed by the Original Owner (if any).

### **33 Building Management and an Owner or Occupier of a Lot**

33.1 An owner or occupier of a lot must not:

- (a) interfere with or stop the Caretaker or the Strata Manager performing their obligations or exercising their rights under their agreements with the Owners Corporation; or
- (b) interfere with or stop the Caretaker or the Strata Manager using such parts of the Common Property as the Owners Corporation permits them to use from time to time.

This is page 15 of a total of 56 pages and is Annexure "A" to the Consolidation of By-Laws/Change of By-Laws form. The seal of THE OWNERS – STRATA PLAN NO 85065 was affixed on the 23<sup>rd</sup> day of August 2019 in the presence of:

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### 34 Exclusive Use Rights to use Mechanical Car Parking Stacking System

34.1 An owner or occupier of a lot set out in the left hand column in the Schedule below (the "MCSS Benefited Lot Owner") has, in respect of the relevant area shown in the sketch attached as Attachment "A" to these by-laws and marked with the same notation set out in the right hand column in the Schedule below (the "MCSS Exclusive Use Area") a right of exclusive use to park or stand a motor or other vehicle in the allocated bay corresponding therewith in the mechanical car parking stacking system ("MCSS") situated on the basement level of the Building.

(a) That the Schedule set out in By-Law 34.1 be replaced with the following Schedule:

Lot Benefited	MCSS Exclusive Use Area
1	Upper Bay in Exclusive Use Area "C"
2	Upper Bay in Exclusive Use Area "D"
3	Upper Bay in Exclusive Use Area "B"
5	Lower Bay in Exclusive Use Area "D"
6 (Lot 12 in SP85347)	Lower Bay in Exclusive Use Area "B"
8	Upper Bay in Exclusive Use Area "A" and Lower Bay in Exclusive Use Area "C"
11	Lower Bay in Exclusive Use Area "A"

(b) Pursuant to which the right of exclusive use to park or stand a motor or other vehicle in the mechanical car parking stacking system situated on the basement level of the Building be amended as follows:

- (1) The Lower Bay in Exclusive Use Area "B" in the mechanical car parking stacking system situated on the basement level of the Building that benefited existing Lot 3 will be revoked as regards to that lot and will instead be granted in favor of existing Lot 6 (which will become Lot 12 in Strata Plan 85347 referred to in Motion No. 10 set out in the Minutes of the First Annual general meeting held on 7 June 2011.

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- (2) The Lower Bay in Exclusive Use Area "C" in the mechanical car parking stacking system situated on the basement level of the Building that benefited existing Lot 6 will be revoked as regards to that lot and will instead be granted in favor of existing Lot 8.
- (3) The Upper Bay in Exclusive Use Area "B" in the mechanical car parking stacking system situated on the basement level of the Building that benefited existing Lot 8 will be revoked as regards to that lot and will instead be granted in favor of existing Lot 3.

34.2 The terms on which the exclusive use area is granted to the MCSS Benefited Lot Owner are as follows:

- (a) The MCSS Benefited Lot Owner has exclusive use of an allocated bay allocated to the Lot Benefited and situated in the relevant MCSS Exclusive Use Area.
- (b) The MCSS Benefited Lot Owner can only use the allocated bay situated in the relevant MCSS Exclusive Use Area to park a Permitted Vehicle. An MCSS Benefited Lot Owner cannot use nor permit anyone else to use the allocated bay situated in the relevant MCSS Exclusive Use Area for any other purpose.
- (c) For the purposes of this by-law 34, "Permitted Vehicle" means a car with the dimensions outlined in the operating instructions lodged with the Owners Corporation for the MCSS Model 440 -185 / 180 and Model 440-200 / 195.
- (d) The MCSS is intended to operate as follows:
  - (i) a user drives their car front end first onto their allocated bay in the MCSS entry module within the relevant MCSS Exclusive Use Area, steps out of their car and then exits the module, then, by use of a special security key or key pad instructs the MCSS to park their car; and
  - (ii) a MCSS Benefited Lot Owner needs to operate the special security key or keypad to retrieve their car which should be returned to the entry module of the relevant MCSS Exclusive Use Area.
- (e) The MCSS Benefited Lot Owner may only use the MCSS situated in the relevant MCSS Exclusive Use Area:
  - (i) to store or retrieve a Permitted Vehicle;
  - (ii) if the Permitted Vehicle is driven in front forward;

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- (iii) if the aerial of the Permitted Vehicle is not extended; and
- (iv) if the MCSS Benefited Lot Owner has paid all moneys payable by it under these by-laws.
- (f) When an MCSS Benefited Lot Owner cannot use the MCSS situated in the relevant MCSS Exclusive Use Area, they must immediately remove their car from their allocated bay so as not to interfere with the use of the MCSS by others.
- (g) The MCSS Benefited Lot Owner must ensure that no animals or persons are in the vehicle whilst it is in the MCSS Exclusive Use Area, except for the driver driving the car into the MCSS, the driver standing next to the controls to operate the MCSS so as to direct the storage or retrieval of their car, and the driver getting in their car after retrieving from the MCSS to drive it out of the MCSS.
- (h) The MCSS Benefited Lot Owner must comply with all directions of the manufacturer of the MCSS and the Owners Corporation as to the proper, efficient and safe use of the MCSS and they must have reasonable regard to the rights of other users to use the MCSS situated in their relevant MCSS Exclusive Use Area to park stand and retrieve their Permitted Vehicles there from.
- (i) The MCSS Benefited Lot Owner must give access to the Owners Corporation to their allocated bay and to the relevant MCSS Exclusive Use Area so that the Owners Corporation can comply with its Obligations under the by-laws and the Act including without limitation for the purposes of maintaining and repairing the Common Property;
- (k) The MCSS Benefited Lot Owner must indemnify the Owners Corporation and each other MCSS Benefited Lot Owner having use of the MCSS in the relevant MCSS Exclusive Use Area for any claims damage liability or loss suffered by the Owners Corporation or by another MCSS Benefited Lot Owner as a result of any willful or negligent non-compliance with this by-law 34 by the MCSS Benefited Lot Owner (or any person permitted by the MCSS Benefited Lot Owner to use their allocated bay in the relevant MCSS Exclusive Use Area);
- (l) The MCSS Benefited Lot Owner must indemnify the Owners Corporation against all claims damage liability or loss caused in the exercise by the MCSS Benefited Lot Owner of rights under this By-Law or using the MCSS equipment.

34.3 The Owners Corporation must:

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- (a) properly maintain and keep in a state of good and serviceable repair the MCSS Exclusive Use Area including the MCSS and any services or equipment which are exclusively required for the operation of the MCSS; and
- (b) as and when reasonably required, renew or replace the MCSS and any services or equipment which are exclusively required by the MCSS; and
- (c) make structural repairs to and replace the MCSS Exclusive Use Areas as and when reasonably required; and
- (d) use reasonable endeavours to ensure that the MCSS is supplied with any necessary power, and the cost of that power will be treated as a recurrent expense payable out of the administrative fund of the Owners Corporation; and
- (e) at its own cost do all other things reasonably required of it to ensure the efficient operation of the MCSS for the benefit of the MCSS Benefited Lot Owners of the relevant MCSS Exclusive Use Area, including without limitation, the maintenance of services shared with the MCSS such as electricity, and the issue of notices to any person who may not be using the MCSS in accordance with this by-law 34;
- (f) at its own cost, obtain and maintain public liability insurance in the name and in the names of the MCSS Benefited Lot Owners and for all of the MCSS Exclusive Use Areas for no lesser sum and upon conditions no less favourable to the insured than any public liability insurance maintained for other parts of the Common Property.

34.4 The Owners Corporation may amend or repeal this by-law only:

- (i) with the prior written consent of the owners of the Lot Benefited; and
- (ii) in accordance with a special resolution.

34.5 For the purposes of this by-law 34:

- (a) the expression "occupier" means and includes lessees, licensees or other persons to whom the right to use and enjoy exclusive possession has been granted by the owners of the Lot Benefited, provided always that the owner having the benefit of the rights of exclusive use granted under this by-law ensures that the occupier fully and promptly complies with each and ever obligation under this by-law as if the occupier was the owner of the relevant Lot Benefited; and
- (b) if there is more than an owner of the Lot Benefited, only the owner first named on the strata roll may exercise the rights in respect of the allocated bay allocated to the MCSS Benefited Lot Owner under this by-law unless all owners of the Lot Benefited give the

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Owners Corporation a written direction that a different specified co-owner is instead to exercise those rights.

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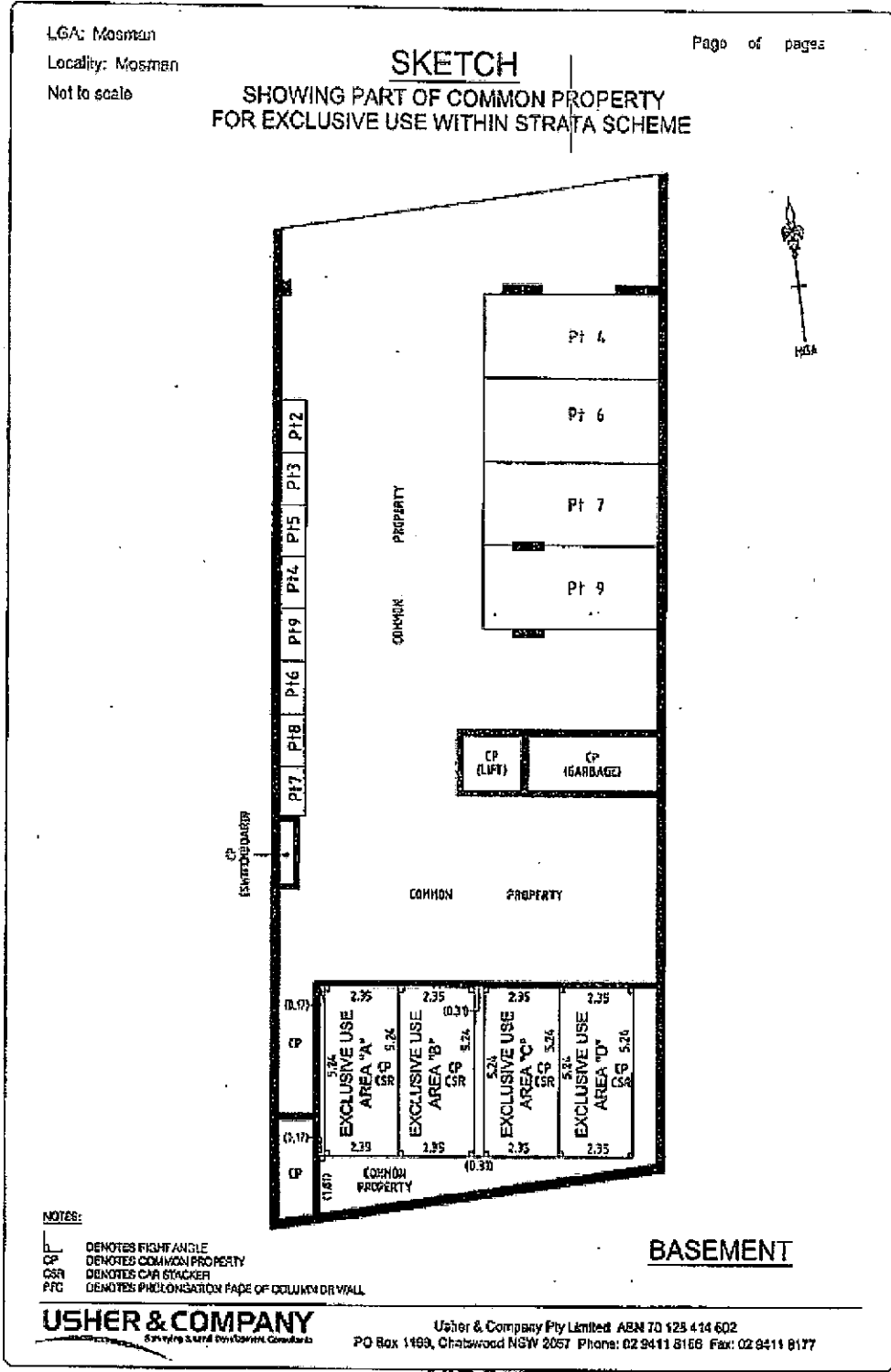
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### 35 Exclusive Use Area "I" for Lot 11 for Storage

35.1 The owners and occupiers for the time being of Lot 11 have rights of exclusive use of the area situated on the ground floor of the building adjacent to Lot 11 and as shown in the sketch attached as Attachment "A" to these by-laws and marked "Exclusive Use Area "I" thereon, for the purposes of storage.

35.2 Rights of exclusive use of Exclusive Use Area "I" are granted to the owners and occupiers of Lot 11 subject to the following:

- (a) the owners and occupiers of Lot 11 must not:
  - (i) leave any garbage or rubbish on Exclusive Use Area "I"; and
  - (ii) despite the provisions of by-law 12, permit Exclusive Use Area "I" to be used to store any hazardous, dangerous or inflammable substance, chemical, liquid or gas or other inflammable material except where such substance, chemical, liquid, gas or material is used in the ordinary course of the business use approved by Mosman Council for Lot 11, in which case such substances, chemicals, liquids, gases or other materials are to be stored as safely as possible in Exclusive Use Area "I"; and
  - (iii) otherwise permit Exclusive Use Area "I" to be used in any way so as to constitute a nuisance or annoyance;
- (b) the owners and occupiers of Lot 11 will be liable for any damage caused to any part of the Building as a result of them failing to properly observe and perform the terms of this exclusive use by-law;
- (c) the owners and occupiers of Lot 11 must indemnify the Owners Corporation from and against any loss or damage that may be suffered as a result of the owner's and occupier's rights of exclusive use pursuant to this by-law 35;
- (d) the owners and occupiers of Lot 11 must, at its own expense obtain all necessary approvals from Mosman Council and any other relevant consent authority for use of Exclusive Use Area "I" should such approvals be necessary or required;
- (e) the owners of Lot 11 must effect insurance policies covering liability for damage to property, injury or death of any person in respect of the use of Exclusive Use Area "I", including without limitation workers compensation insurance as required by law and public liability insurance for an amount of not less than \$10,000,000.00 for any single incident.

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- 35.3 The owner and occupier of Lot 11 shall be responsible at their own cost and expense:
- (a) for the proper maintenance of and keeping in a state of good and serviceable repair the internal surfaces of walls floors and ceilings of Exclusive Use Area "I", and shall as and when required, repaint the walls to reinstate them to the condition they were in when this by-law was granted; and
  - (b) to make good any damage caused to Exclusive Use Area "I", the Common Property or to the Building as a result of the owner and occupier exercising its rights under this by-law 35.
- 35.4 The owner and occupier of Lot 11 shall permit the Owners Corporation and any employee or contractor appointed by it to access Exclusive Use Area "I" for the purposes of carrying out maintenance of the Building and any Common Property plant or other structures located on or near Exclusive Use Area "I" of the Building provided that the Owners Corporation gives the owner not less than seven days (7) written notice that it requires access to the Exclusive Use Area "I" (except in case of an emergency in which event no notice is required).
- 35.5 The Owners Corporation may make, amend or repeal this by-law 35 only:
- (a) with the written consent of the owners of Lot 11; and
  - (b) in accordance with a special resolution.
- 35.6 In this by-law 35, "occupiers" means and includes lessees, licensees or other persons to whom the right of use and enjoy exclusive possession or occupation has been granted by the owners of Lot 11.

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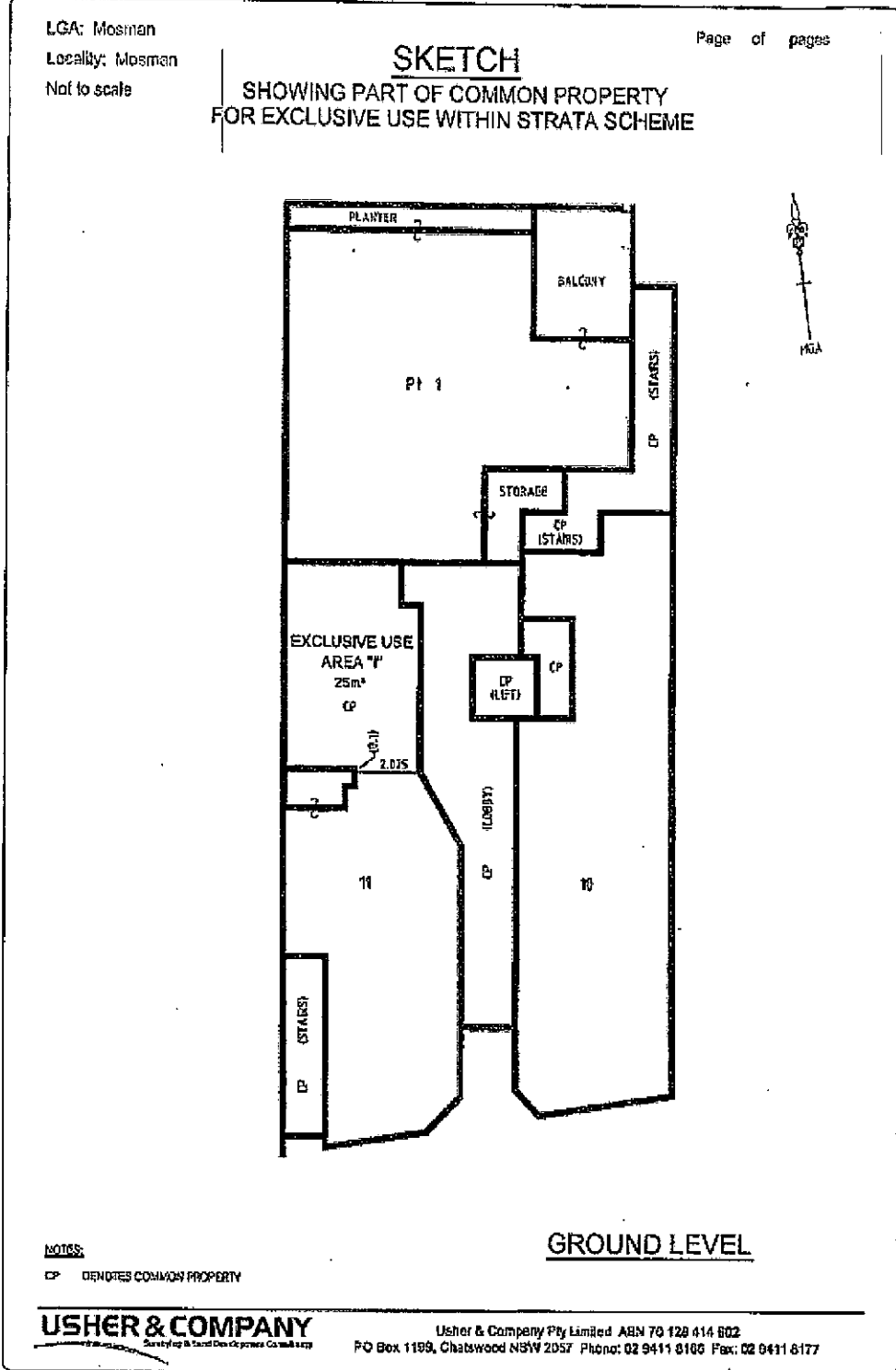
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### 36 Exclusive Use Areas "J" And "K", for Lot 11 for Signage

36.1 The owners and occupiers for the time being of Lot 11 have rights of exclusive use of the following areas:

- (a) the external face of the boundary wall on the western side of the Building as shown in the sketch attached as Attachment "A" to these by-laws and marked "Exclusive Use Area "J" thereon; and
- (b) the external face of the boundary wall on the eastern side of the Building as shown in the sketch attached as Attachment "A" to these by-laws and marked "Exclusive Use Area "K" thereon; and
- (c) those parts of the external walls of the Building directly behind the external face of the boundary walls comprising Exclusive Use Areas "J" and "K"

for the purposes of affixing, erecting, installing, and maintaining signage including without limitation, the installation and maintenance of advertising hoardings or other similar structures.

36.2 The Owners Corporation shall, if required by the owner or occupier of Lot 11, endorse its consent to and sign all applications and other documents reasonably required by the owner or occupier of Lot 11 to be signed by the Owners Corporation in connection with the affixing, erecting, installation or maintenance of any signage (including without limitation any application for consent to Mosman Council under by-law 36.3(a)), on the basis that the owners and occupiers of Lot 11 shall comply with their obligations under this by-law 36.

36.3 Rights of exclusive use over the areas referred to in by-law 36.1 are granted to the owners and occupiers of Lot 11 subject to the following:

- (a) before affixing, erecting or installing any signage (including without limitation any advertising hoardings or other similar structures) the owner or occupier of Lot 11 must obtain, at the owner's or occupier's expense, all necessary consents from Mosman Council and any other relevant authority required for the affixing, erecting or installation of any such signage and provide a copy of the consent to the Owners Corporation; and
- (b) when affixing, erecting, installing or maintaining any signage, the owner and occupier of Lot 11 must:
  - (i) ensure that none of the alterations made to the Common Property authorised by this by-law 36 will result in a loss of structural support to any part of the Building; and

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- (ii) not damage any service lines or pipes or interrupt any services; and
  - (iii) carry out the work in a proper and workmanlike manner without undue delay and in accordance with all consents from Mosman Council and any other relevant authority; and
  - (iv) use qualified and reputable contractors to carry out any works; and
  - (v) use all reasonable endeavours to cause as little disruption to owners and occupiers of other lots in the Strata Scheme as possible; and
  - (vi) use all reasonable endeavours to protect and keep free from damage the surrounding façade of the Building and the surrounding Common Property; and
  - (vii) repair and make good all damage caused to the surrounding façade of the Building and the surrounding Common Property, and repair and make good any and all damage caused to the Common Property or to another owner or occupier's lot; and
  - (viii) not permit Exclusive Use Areas "J" or "K" to be used in any way so as to constitute a nuisance or annoyance; and
- (c) the owners and occupiers of Lot 11 will be liable for any damage caused to any part of the Building as a result of them failing to properly observe and perform the terms of this exclusive use by-law 36;
  - (d) the owners and occupiers of Lot 11 must indemnify the Owners Corporation from and against any loss or damage that may be suffered as a result of the owner's and occupier's rights of exclusive use pursuant to this by-law 36;
  - (e) the owners of Lot 11 must effect insurance policies covering liability for damage to property, injury or death of any person arising from or in connection with the use of Exclusive Use Areas "J" or "K" by the owners or occupiers of Lot 11 under this by-law 36, including without limitation workers compensation insurance as required by law and public liability insurance for an amount of not less than \$10,000,000.00 for any single incident.

36.4 The owner and occupier of Lot 11 shall be responsible at their own cost and expense:

- (a) for the proper maintenance of and keeping in a state of good and serviceable repair the external surfaces of the walls of Exclusive Use Areas "J" and "K"; and

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(b) to make good any damage caused to Exclusive Use Areas "J" or "K", the Common Property or to the Building as a result of the owner and occupier exercising its rights under this by-law 36.

36.5 The owner and occupier of Lot 11 agrees that it shall, when Exclusive Use Areas "J" or "K" areas are not being used for signage purposes set out in this by-law 36, restore the external walls as required to reinstate them to good condition and generally to the same appearance they were in when this by-law was granted.

36.6 The owner and occupier shall not by mere non-usage of the rights in this by-law 36 be deemed to have abandoned any of its rights granted under this by-law 36.

36.7 The Owners Corporation may make, amend or repeal this by-law 36 only:

(a) with the written consent of the owners of Lot 11; and

(b) in accordance with a special resolution.

36.8 In this by-law 36, "occupiers" means and includes lessees, licensees or other persons to whom the right to use and enjoy exclusive possession or occupation has been granted by the owners of Lot 11.

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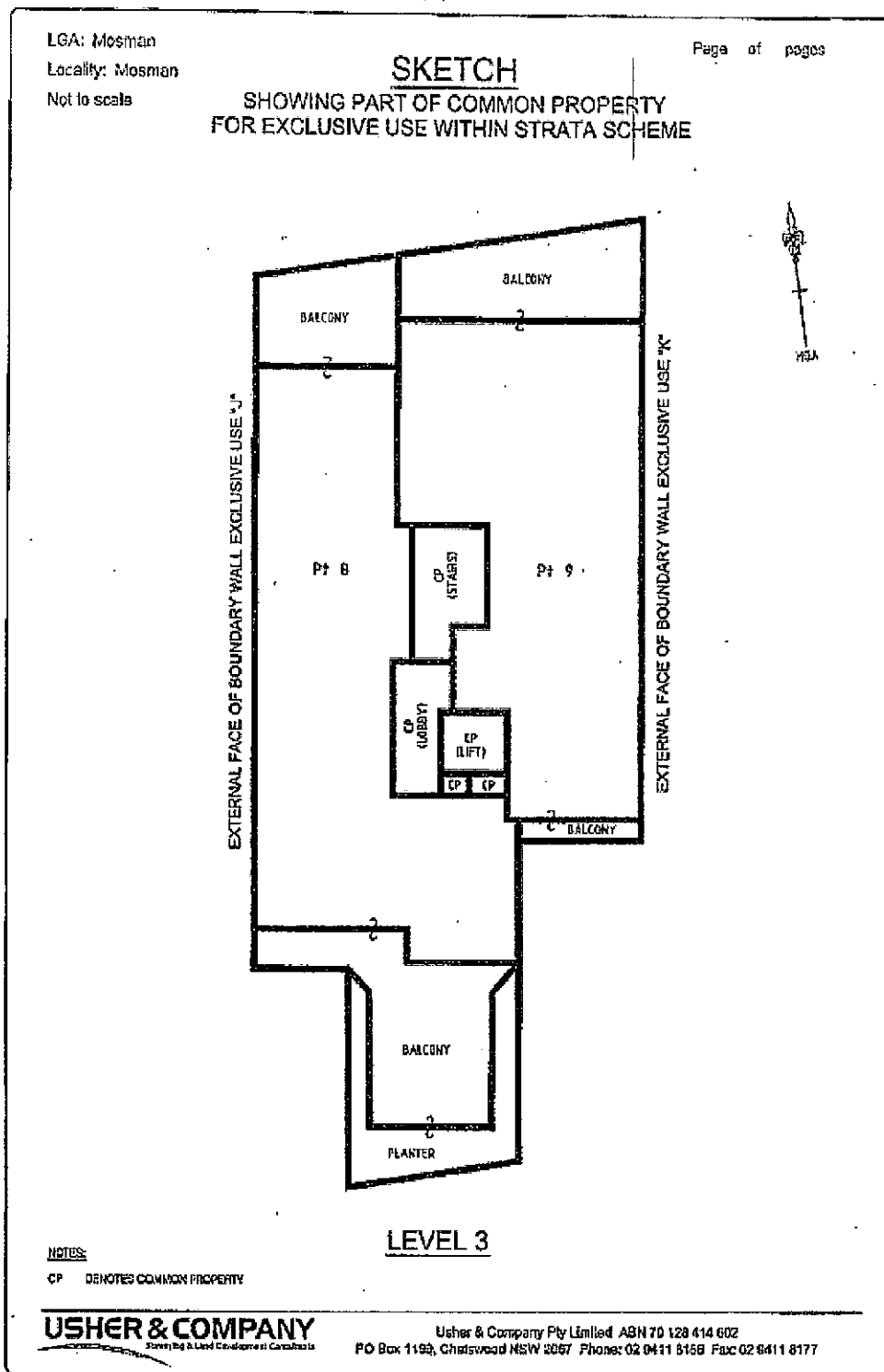
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"A"



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## 37 Renovations

### Definitions and Interpretation

1. In this by-law:

- (a) “Cosmetic Work” means an owner’s work which affects the common property in connection with their lot for the following purposes:
- (i) installing or replacing hooks, nails, screws or the like for hanging paintings and other things on walls;
  - (ii) installing or replacing handrails;
  - (iii) painting;
  - (iv) filling minor holes and cracks in internal walls;
  - (v) laying carpet;
  - (vi) installing or replacing built-in wardrobes;
  - (vii) installing or replacing internal blinds and curtains;
  - (viii) installing any locking or other safety device for protection of a lot against intruders;
  - (ix) installing any screen or other device to prevent entry of animals or insects on the lot;
  - (x) installing any locking or other safety device to improve safety within a lot;
  - (xi) installing any device used to affix decorative items (e.g. framed paintings) to the internal surfaces of walls in a lot;
  - (xii) any other work described in Section 109(2) of the Act;

but does not include:

- (A) Minor Renovations;
- (B) work involving structural changes;

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- (C) work that changes the external appearance of a lot, including the installation of an external access ramp;
  - (D) work that detrimentally affects the safety of a lot or common property, including fire safety systems;
  - (E) work involving waterproofing or the plumbing or exhaust system of the building;
  - (F) work involving reconfiguring walls;
  - (G) work for which consent or another approval is required under any other legislation (e.g. development consent under the *Environmental Planning and Assessment Act 1979*);
  - (H) any other work described in Section 109(5) of the Act.
- (b) **“Minor Renovations”** means an owner’s work which affects the common property in connection with their lot for the following purposes:
- (i) renovating any room in a lot;
  - (ii) changing recessed light fittings;
  - (iii) installing or replacing wood or other hard floors;
  - (iv) installing or replacing wiring, cabling, pipes, or ducts;
  - (v) installing or replacing power or access points;
  - (vi) work involving reconfiguring walls;
  - (vii) removing carpet or other soft floor coverings to expose underlying wooden or other hard floors;
  - (viii) installing a rainwater tank;
  - (ix) installing a clothesline;
  - (x) installing a reverse cycle split system air conditioner or ducted air conditioning system;
  - (xi) installing double or triple glazed windows;

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**Signatures.....**

**.....**

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- (xii) installing a heat pump or other hot water service;
  - (xiii) installing ceiling insulation;
  - (xiv) installing an aerial, antenna, or satellite dish;
  - (xv) installing a skylight, ventilation or exhaust fan or a whirlybird directly above a lot;
  - (xvi) any other work described in Section 110(3) of the Act;
  - (xvii) any other work that is not:
    - (A) Cosmetic Work;
    - (B) work involving structural changes;
    - (C) work that changes the external appearance of a lot, including the installation of an external access ramp;
    - (D) work involving waterproofing;
    - (E) work for which consent or another approval is required under any other legislation (e.g. development consent under the *Environmental Planning and Assessment Act 1979*);
    - (F) work that is authorised by a by-law made under Section 108 of the Act or a common property rights by-law;
    - (G) any other work described in Section 110(7) of the Act;
- (c) **“Major Renovations”** means an owner’s work which affects the common property for the following purposes:
- (i) structural changes;
  - (ii) changes to the external appearance of a lot, including the installation of an external access ramp;
  - (iii) waterproofing;
  - (iv) work for which consent or another approval is required under any other legislation (e.g. development consent under the *Environmental Planning and Assessment Act 1979*);

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- (v) work that is not Cosmetic Work or Minor Renovations.
- (d) "Act" means the *Strata Schemes Management Act 2015*.
- (e) Unless the context or subject matter otherwise indicates or requires:
  - (i) Reference to the singular includes the plural and the plural includes the singular;
  - (ii) "Including" and similar expressions are not words of limitation;
  - (iii) Headings are for convenience only and do not affect the interpretation of this by-law;
  - (iv) Any expression used in this by-law and which is defined in the Act has the same meaning as that expression has in the Act unless a contrary intention is expressed in this by-law;
  - (v) Reference to a "lot" includes part of the lot.

**Cosmetic Work**

- 2. An owner may carry out Cosmetic Work without the approval of the owners corporation, and if so, must comply with the conditions contained in clauses 4 to 8.
- 3. The owners corporation has decided, in accordance with Section 106(3) of the Act, that it is inappropriate to maintain, renew, replace or repair Cosmetic Work and its decision will not affect the safety of any building, structure or common property or detract from the appearance of any property in the strata scheme.

**Carrying out Cosmetic Work**

- 4. When carrying out Cosmetic Work an owner must:
  - (a) do the work in a proper, timely, skilful, and workmanlike manner using materials that are suitable for the purpose for which they are used;
  - (b) ensure that any contractors are adequately supervised to ensure compliance with these conditions;
  - (c) ensure that the work complies with applicable Australian Standards and the Building Code of Australia (and in the event of any inconsistency, the Building Code of Australia will prevail);

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- (d) make suitable arrangements with the owners corporation regarding the times and method for the owner's contractor to access the building and the parking of any vehicle of the contractor on the parcel while the works are being conducted;
- (e) only perform the works at the following times:
  - (i) all noisy building activities (including, but not limited to, concrete cutting, drilling or constant hammering) between 9am and 3pm Monday to Friday only and not on a public holiday. Any extremely noisy work (such as work involving the use of jackhammers and rotary hammer drills) outside a single four-hour period between 9am and 3pm in any week (that is from Monday to Friday, excluding public holidays) is prohibited;
  - (ii) all other work between 9am and 5pm Monday to Friday and 9am to 3pm on a Saturday and not on a public holiday or any other time;
- (f) transport each item including but not limited to construction materials, equipment and debris in the manner reasonably directed by the owners corporation;
- (g) protect the building both internal and external to the lot from damage from the conduct of the works (including their removal) and from the transportation of construction material, equipment, debris and other material required to conduct and maintain the works, in a manner reasonably acceptable to the owners corporation including but not limited to laying protective mats on common property floors likely to be affected by the transportation of goods or building materials to and from the lot and ensuring that power tools are not used to cut materials on common property;
- (h) keep common property access ways to their lot clean and free from building materials, dust and rubble at all times. No building material or refuse of any kind must be left on common property;
- (i) remove rubbish from the building arising as a result of the works daily and dispose of the rubbish in a manner approved by the owners corporation and not, unless approved, in any of the rubbish bins for the building;
- (j) subject to the any safety requirements, keep the entrance door, any balcony door or doors, and all windows to the owner's lot, closed at all times while the works are being conducted;

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- (k) ensure that the security of the building is not compromised and that no common property doors are left open for an unreasonable period or left open and not attended;
- (l) not use common property power or water;
- (m) pay all costs associated with the work, including any costs, fees, expenses or fines incurred by the owners corporation in relation to the work.

Use of Cosmetic Works

- 5. An owner (or other user of the work) must ensure that the use of the work following completion:
  - (a) does not unreasonably interfere with the peaceful use or enjoyment of an occupier of another lot or any person lawfully using the common property;
  - (b) complies with applicable laws, and applicable requirements of the local council.

Repair of any damage

- 6. An owner must repair any damage caused to any other lot or the common property by the conduct or use of the works, such repairs to be carried out without delay.

Repair and maintenance

- 7. An owner must maintain and keep in a state of good and serviceable repair the work and any common property affected by the work. The owner must also renew or replace the work where necessary. The provisions of clause 4 apply to any work the owner carries out to comply with this clause.

Indemnity

- 8. An owner indemnifies and keeps the owners corporation indemnified against any loss, claim, cost, legal liability or proceedings in respect of any injury, loss or damage whatsoever to the common property, or other property or person insofar as such injury, loss or damage arises out of the:
  - (a) performance of the work;
  - (b) use of the work;
  - (c) failure to comply the duty to maintain, repair, renew or replace;

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Signatures.....

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- (d) performance of any work required to comply with the duty to maintain, repair, renew or replace;
- (e) owner’s breach of any part of this by-law.

**Minor Renovations**

- 9. An owner may only carry out Minor Renovations with the approval of the owners corporation.
- 10. The owners corporation delegates its functions under Section 110 of the Act to the strata committee. In the event the owners corporation and the strata committee exercise the same function under Section 110 of the Act, the exercise of the function by the owners corporation prevails.
- 11. The owners corporation has decided, in accordance with Section 106(3) of the Act, that it is inappropriate to maintain, renew, replace or repair Minor Renovations and its decision will not affect the safety of any building, structure or common property or detract from the appearance of any property in the strata scheme.

**Application to owners corporation for approval for Minor Renovations**

- 12. Before the owners corporation considers approving Minor Renovations, an owner must make an application to the owners corporation for approval, such an application to be in writing and sent to the secretary of the owners corporation and must contain:
  - (a) the owner’s name, address and telephone number;
  - (b) the lot number connected with the works;
  - (c) details of the work including plans, specifications, drawings, conditions, and notes;
  - (d) a copy of any tax invoice, quote, contract or agreement in relation to the work;
  - (e) an estimate of the duration and times of the work;
  - (f) details of the persons carrying out the work including their name, licence number, qualification, and telephone number;
  - (g) details of arrangements to manage any resulting rubbish or debris arising from the work;

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**Signatures.....**

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- (h) a statement that the work does not involve:
  - (i) the removal or alteration of a structural element of the building;
  - (ii) the installation, replacement or exposure of a waterproofing membrane or flashings;
  - (iii) changing the external appearance of any lot;
  - (iv) detrimentally affecting the safety of a lot, including fire systems;
- (i) a statement that the owner will be responsible for the costs of the owners corporation in considering the application for approval including any meeting costs or the costs of engaging any consultant.

Determination of application for approval of Minor Renovations

13. When determining an application made in accordance with clause 12, the owners corporation may:
- (a) request further information from the owner if considered necessary (acting reasonably) to supplement the original application (and thereafter re determine the application);
  - (b) engage a consultant to assist it to review the application;
  - (c) approve the application with some or all the conditions contained in clauses 14 to 24, or impose additional conditions;
  - (d) refuse the application, but must not act unreasonably when doing so.

Before Minor Renovations are carried out

14. Before carrying out Minor Renovations an owner must:
- (a) give to the owners corporation evidence that those persons carrying out the work have:
    - (i) any requisite current licence to conduct the work;
    - (ii) contractors' all risks insurance cover (incorporating cover against public risk in respect of claims for death, injury, accident and damage occurring in the course of or by reason of the works to a minimum of \$10,000,000);

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- (iii) insurance if required under Section 92 of the *Home Building Act 1989*;
- (iv) workers compensation insurance if required by law;
- (b) give to the owners corporation and each occupier (which can be by way of letter box drop) in the building in which the lot is situated, written notice of the anticipated commencement and completion date of the work, such notice to be given at least 7 days before the commencement of the work;
- (c) if the work involves:
  - (i) removing carpet or other soft floor coverings to expose underlying hard floors; or,
  - (ii) the installation or replacement of wood or other hard floors;to an area other than a kitchen, bathroom, or laundry, provide to the owners corporation certification from an acoustical consultant approved by the owners corporation, that new flooring will have an acoustical star rating of 5 Stars or better, according to the Guideline for Apartment and Townhouse Acoustic Rating promulgated by the Australian Association of Acoustical Consultants, such certification to be in favour of the owners corporation.
- (d) If requested by the owners corporation:
  - (i) give to the owners corporation a report from a structural engineer approved by the owners corporation, certifying that the work does not involve structural changes, such certification to be in favour of the owners corporation;
  - (ii) give to the owners corporation a report from a waterproofing expert approved by the owners corporation, certifying that the work does not involve waterproofing, such certification to be in favour of the owners corporation;
  - (iii) give to the owners corporation a dilapidation report prepared by a person approved by the owners corporation and having reviewed the approved application, such a report be in writing and to include photographs of any area of the building that may be affected by the work;
  - (iv) pay a bond to the owners corporation in such an amount and on such terms as the owners corporation determines, acting reasonably.

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When Minor Renovations are being carried out

15. When carrying out Minor Renovations an owner must:

- (a) do the work in a proper, timely, skilful, and workmanlike manner by using appropriately qualified and licensed contractor, using materials that are suitable for the purpose for which they are used;
- (b) ensure that any contractors are adequately supervised to ensure compliance with these conditions;
- (c) ensure that the work complies with applicable Australian Standards and the Building Code of Australia (and in the event of any inconsistency, the Building Code of Australia will prevail);
- (d) make suitable arrangements with the owners corporation regarding the times and method for the owner’s contractor to access the building and the parking of any vehicle of the contractor on the parcel while the works are being conducted;
- (e) only perform the works at the following times:
  - (i) All noisy building activities (including, but not limited to, concrete cutting, drilling or constant hammering) between 9am and 3pm Monday to Friday only and not on a public holiday. Any extremely noisy work (such as work involving the use of jackhammers and rotary hammer drills) outside a single four-hour period between 9am and 3pm in any week (that is from Monday to Friday, excluding public holidays) is prohibited;
  - (ii) All other work between 9am and 5pm Monday to Friday and 9am to 3pm on a Saturday and not on a public holiday or any other time;
- (f) transport each item including but not limited to construction materials, equipment and debris in the manner reasonably directed by the owners corporation;
- (g) protect the building both internal and external to the lot from damage from the conduct of the works (including their removal) and from the transportation of construction material, equipment, debris and other material required to conduct and maintain the works, in a manner reasonably acceptable to the owners corporation including but not limited to laying protective mats on common property floors likely to be affected by the transportation of goods or

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building materials to and from the lot and ensuring that power tools are not used to cut materials on common property;

- (h) keep common property access ways to their lot clean and free from building materials, dust and rubble at all times. No building material or refuse of any kind must be left on common property;
- (i) remove rubbish from the building arising as a result of the works daily and dispose of the rubbish in a manner approved by the owners corporation and not, unless approved, in any of the rubbish bins for the building;
- (j) subject to any safety requirements, keep the entrance door, any balcony door or doors, and all windows to the owner's lot closed at all times while the works are being conducted;
- (k) ensure that the security of the building is not compromised and that no common property doors are left open for an unreasonable period or left open and not attended;
- (l) not use common property power or water;
- (m) give access to the owners corporation's nominee to the lot to inspect (and if required by the owners corporation to also supervise) the work upon reasonable notice being given.

After Minor Renovations are carried out

16. After carrying out Minor Renovations an owner must:

- (a) notify the owners corporation that the work has been completed within 7 days after its completion;
- (b) give the access to the owners corporation's nominee to the lot to inspect the work;
- (c) notify the owners corporation that all damage, if any, to lots and common property caused by the works and not permitted by the approval has been rectified, and provide proof to the satisfaction of the owners corporation. Such notice must be provided to the owners corporation within 28 days of the completion of the work;
- (d) if the work involved:

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- (i) removing carpet or other soft floor coverings to expose underlying hard floors; or,
- (ii) the installation or replacement of wood or other hard floors;

to an area other than a kitchen, bathroom, or laundry, provide to the owners corporation a report from an acoustical consultant approved by the owners corporation, that the new flooring has an acoustical star rating of 5 Stars or better, according to the Guideline for Apartment and Townhouse Acoustic Rating promulgated by the Australian Association of Acoustical Consultants;

- (e) if required by the owners corporation:
  - (i) give to the owners corporation a report from a structural engineer approved by the owners corporation, certifying that the work has not affected the structural integrity of the building, such certification to be in favour of the owners corporation;
  - (ii) give to the owners corporation a report from a waterproofing expert approved by the owners corporation, certifying that the work has not affected any existing waterproofing membrane or has involved waterproofing, such certification to be in favour of the owners corporation;
  - (iii) give to the owners corporation a report from a duly qualified building consultant or expert approved by the owners corporation, certifying that the work has been completed in compliance with the Building Code of Australia and any applicable Australian Standards, such certification to be in favour of the owners corporation;
  - (iv) give a post works dilapidation report prepared by the same person who prepared the report in clause 14(d)(iii).

Use of Minor Renovations

- 17. An owner (or other user of the work) must ensure that the use of the work following completion:
  - (a) does not unreasonably interfere with the peaceful use or enjoyment of an occupier of another lot or any person lawfully using the common property;
  - (b) complies with applicable laws, and applicable requirements of the local council.

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Repair of any damage

18. An owner must repair any damage caused to any other lot or the common property by the conduct or use of the works, such repairs to be carried out without delay.

Repair and maintenance

19. An owner must maintain and keep in a state of good and serviceable repair the work and any common property affected by the work. An owner must also renew or replace the work where necessary. The provisions of clauses 14 to 16 apply to any work the owner carries out to comply with this clause.

Indemnity

20. An owner indemnifies and keeps the owners corporation indemnified against any loss, claim, cost, legal liability or proceedings in respect of any injury, loss or damage whatsoever to the common property, or other property or person insofar as such injury, loss or damage arises out of the:

- (a) performance of the work;
- (b) use of the work;
- (c) failure to comply the duty to maintain, repair, renew or replace;
- (d) performance of any work required to comply with the duty to maintain, repair, renew or replace;
- (e) owner’s breach of any part of this by-law insofar as it related to Minor Renovations.

Insurance

21. An owner must, if required by the owners corporation, make, or permit the owners corporation to make on the owner’s behalf, any insurance claim concerning or arising from the work, and use the proceeds of any insurance payment made as a result of an insurance claim to complete the work or repair any damage to the building caused by the work.

Bond

22. The owners corporation may apply any part of a bond paid by an owner towards the costs of the owners corporation incurred in repairing any damage caused to common

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property or any other lot during or as a result of the work, or cleaning any part of the common property as a result of the work.

- 23. The owners corporation must refund the bond, or the remaining balance of it, within 14 days of being notified by an owner that work has been completed and the owners corporation is reasonably satisfied that the owner has complied with the conditions of approving the work.

Costs

- 24. An owner is responsible for all costs, fees, and expenses incurred by the owners corporation in considering or granting approval, enforcing any breach of a condition of approval, and undertaking any action, matter or thing required of it in relation to a Minor Renovation.

Major Renovations

- 25. An owner may only conduct Major Renovations in accordance with the following conditions:
  - (a) the owners corporation must authorise the work by passing a special resolution in accordance with s.108(2) of the Act on terms which may incorporate, by reference to this by-law, one or more of the conditions set out in Schedule 1, except to the extent of any contrary provision in the authorisation;
  - (b) a by-law is made by the owners corporation under or for the purposes of s.108(5) of the Act on terms which impose upon the owner the duty to maintain the Major Renovation and may incorporate, by reference to this by-law, one or more of the conditions set out in Schedule 2;
  - (c) the by-law is registered and a recording made in the certificate of title comprising the common property.
- 26. An owner should undertake the process in clause 27 before presenting any motion referred to in clause 25 for the consideration of the owners corporation.

Application to owners corporation for approval for Major Renovations

- 27. An owner should make an application to the owners corporation for approval, such an application to be in writing and sent to the secretary of the owners corporation and must contain:
  - (a) the owner’s name, address and telephone number;

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- (b) the lot number connected with the works;
- (c) details of the work including plans, specifications, drawings, conditions, and notes;
- (d) a copy of any tax invoice, quote, contract or agreement in relation to the work;
- (e) an estimate of the duration and times of the work;
- (f) details of the persons carrying out the work including their name, licence number, qualification and telephone number;
- (g) details of arrangements to manage any resulting rubbish or debris arising from the work;
- (h) motions generally in the form of Schedule 1 and 2 (with the blank parts appropriately filled in and any changes marked up);
- (i) the owner's consent to the making of the by-law;
- (j) a statement that the owner will be responsible for the costs of the owners corporation in considering the application for approval including any meeting costs or the costs of engaging any consultant.

Determination of Application for Approval of Major Renovations

28. When determining an application made in accordance with clause 27, an owners corporation may:
- (a) request further information from the owner if considered necessary (acting reasonably) to supplement the original application (and thereafter re determine the application);
  - (b) engage a consultant to assist it to review the application;
  - (c) approve the application in its original form, or with amendments to the motions required in clause 25;
  - (d) refuse the application, but must not act unreasonably when doing so.

Breach of this By-Law

29. If an owner fails to comply or breaches any part of this by-law, then the owners corporation may:

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- (a) request, in writing, that the owner complies or rectifies the breach within 14 days or such other period as is specified in the notice;
- (b) if the owner fails to comply with the request in sub clause (a):
  - (i) without prejudice to any other rights, enter upon any part of the lot, to carry out any work necessary to ensure compliance with this by-law or an order from council, a Court or a Tribunal;
  - (ii) recover the costs of carrying out work referred to in this clause hereto from the owner;
  - (iii) recover as a debt any amounts payable by an owner pursuant to this by-law.

**Schedule of approved Minor Renovations and Major Renovations**

30. The owners corporation must, from the date of registration of this by-law, maintain a schedule of approved Minor Renovations and Major Renovations in the form of Schedule 3 to this by-law.

**By-Law Prevails**

31. This by-law prevails to the extent of any inconsistency with any other by-law.

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## SCHEDULE 1

THAT the owners corporation **SPECIALLY RESOLVES** pursuant to s.108(2) of the *Strata Schemes Management Act 2015*:

1. That the owner of lot .....{INSERT LOT NUMBER} ("the owner"), be authorised to add to, to alter and to erect new structures on the common property, by undertaking:
  - (a) .....{INSERT DESCRIPTION OF THE WORKS TO BE UNDERTAKEN} described in .....{INSERT DESCRIPTION OF THE DRAWINGS/DIAGRAMS/DOCUMENTS OUTLINING THE NATURE OF THE WORKS TO BE UNDERTAKEN}, copies of which form an exhibit to the minutes of the meeting at which this resolution is made; and
  - (b) Such other works as are necessary for the safe and lawful undertaking of the works referred to in paragraph (a).
  
2. That the authority referred to in paragraph 1 is given by the owners corporation:
  - (a) on the basis that the ongoing maintenance of the alterations and additions to the common property, and the new structures on the common property, made in the course of the authorised works is the responsibility of the owner; and
  - (b) subject to a by-law being made with the consent in writing of the owner, which gives effect to the responsibility for maintenance referred to in 2(a).

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## SCHEDULE 2

THAT the owners corporation **SPECIALLY RESOLVES** pursuant to s.108(5) of the *Strata Schemes Management Act 2015* to make an additional by-law in the following terms and have it registered:

**SPECIAL BY-LAW** ..... {INSERT NEXT SPECIAL BY-LAW NUMBER}

1. The owners corporation has given authority pursuant s.108 of the *Strata Schemes Management Act 2015* to the owner lot .....{INSERT LOT NUMBER} (“the owner”), to add to, to alter and to erect new structures on the common property, by undertaking:
  - (a) .....{INSERT DESCRIPTION OF THE WORKS TO BE UNDERTAKEN} described in .....{INSERT DESCRIPTION OF THE DRAWINGS/DIAGRAMS/DOCUMENTS OUTLINING THE NATURE OF THE WORKS TO BE UNDERTAKEN}, copies of which form an exhibit to the minutes of the meeting at which this by-law was made; and
  - (b) Such other works as are necessary for the safe and lawful undertaking of the works referred to in paragraph (a).
2. After the completion of the authorised works referred to in clause 1, the owner will be responsible, at their own expense, for the ongoing maintenance of the alterations and additions to the common property, and the new structures on the common property, made in the course of the authorised works.
3. The authorisation of the owners corporation and this by-law is subject to the Schedule of Conditions.

### SCHEDULE OF CONDITIONS

4. In this schedule:
  - (a) “Act” means the *Strata Schemes Management Act 2015*;
  - (b) “Authority” means any government, semi government, statutory, public or other authority having any jurisdiction over the Lot (including an accredited certifier under the *Environmental Planning and Assessment Act 1979*);
  - (c) “Lot” means lot .....{INSERT LOT NUMBER};
  - (d) “work” means the work referred to in clause 1 of this by-law;

This is page 46 of a total of 56 pages and is Annexure “A” to the Consolidation of By-Laws/Change of By-Laws form. The seal of THE OWNERS – STRATA PLAN NO 85065 was affixed on the 23<sup>rd</sup> day of August 2019 in the presence of:

Names:.....

Signatures.....

.....

Being the persons authorised by Section 273 of the *Strata Schemes Management Act 2015* to attest the affixing of the seal.

- (e) Unless the context or subject matter otherwise indicates or requires:
  - (i) Reference to the singular includes the plural and vice versa;
  - (ii) A thing includes the whole or part of it;
  - (iii) A person includes an individual, a firm, a body corporate, an incorporated association or an authority, or their personal representatives, executors, administrators, successors and assigns;
  - (iv) A document includes any amendment or replacement of it;
  - (v) "Including" and similar expressions are not words of limitation;
  - (vi) Headings are for convenience only and do not affect the interpretation of this by-law;
  - (vii) Any expression used in this by-law and which is defined in the Act has the same meaning as that expression has in the Act unless a contrary intention is expressed in this by-law.

Before work is carried out

- 5. Before carrying out work, the owner must:
  - (a) Obtain and provide to the owners corporation a copy of any requisite approval of any Authority to conduct the works, including any certificates issued under Part 4A of the *Environmental Planning and Assessment Act 1979*.
  - (b) Give to the owners corporation evidence at those persons carrying out the work has:
    - (i) Any requisite current licence to conduct the work;
    - (ii) Contractors' all risks insurance cover (incorporating cover against public risk in respect of claims for death, injury, accident and damage occurring in the course of or by reason of the works to a minimum of \$10,000,000);
    - (iii) Insurance if required under Section 92 of the *Home Building Act 1989*;
    - (iv) Workers compensation insurance if required by law;
  - (c) Give to the owners corporation and each occupier (which can be by way of letter box drop) in the building in which the lot is situated, written notice of the

This is page 47 of a total of 56 pages and is Annexure "A" to the Consolidation of By-Laws/Change of By-Laws form. The seal of THE OWNERS – STRATA PLAN NO 85065 was affixed on the 23<sup>rd</sup> day of August 2019 in the presence of:

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.....

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anticipated commencement and completion date of the work, such notice to be given at least 7 days before the commencement of the work;

- (d) If the work involves:
  - (i) Removing carpet or other soft floor coverings to expose underlying hard floors; or
  - (ii) The installation or replacement of wood or other hard floors;

to an area other than a kitchen, bathroom, or laundry, provide to the owners corporation certification from an acoustical consultant approved by the owners corporation, that new flooring will have an acoustical star rating of 5 Stars or better, according to the Guideline for Apartment and Townhouse Acoustic Rating promulgated by the Australian Association of Acoustical Consultants, such certification to be in favour of the owners corporation;

- (e) If requested by the owners corporation:
  - (i) Give to the owners corporation a report from a structural engineer approved by the owners corporation, certifying that the work does not adversely affect the structural integrity of the building, such certification to be in favour of the owners corporation;
  - (ii) Give to the owners corporation a dilapidation report prepared by a person approved by the owners corporation, such a report to be in writing and include photographs of any area of the building that may be affected by the work;
  - (iii) Pay a bond to the owners corporation in such an amount and on such terms as the owners corporation determines, acting reasonably;

When work is being carried out

- 6. When carrying out work, the owner must:
  - (a) Comply with any condition or requirement of any Authority;
  - (b) Do the work in a proper, timely, skilful, and workmanlike manner by using appropriately qualified and licensed contractor, using materials that are suitable for the purpose for which they are used;

This is page 48 of a total of 56 pages and is Annexure "A" to the Consolidation of By-Laws/Change of By-Laws form. The seal of THE OWNERS – STRATA PLAN NO 85065 was affixed on the 23<sup>rd</sup> day of August 2019 in the presence of:

Names:.....

Signatures.....

.....

Being the persons authorised by Section 273 of the *Strata Schemes Management Act 2015* to attest the affixing of the seal.

- (c) Ensure that any contractors are adequately supervised to ensure compliance with these conditions;
- (d) Ensure that the work complies with applicable Australian Standards and the Building Code of Australia (and in the event of any inconsistency, the Building Code of Australia will prevail);
- (e) Make suitable arrangements with the owners corporation regarding the times and method for the owner's contractor to access the building and the parking of any vehicle of the contractor on the parcel while the works are being conducted;
- (f) In the absence of any limitation imposed by any Authority, only perform the works at the following times:
  - (i) All noisy building activities (including, but not limited to, concrete cutting, drilling or constant hammering) between 9am and 3pm Monday to Friday only and not on a public holiday. Any extremely noisy work (such as work involving the use of jackhammers and rotary hammer drills) outside a single four-hour period between 9am and 3pm in any week (that is from Monday to Friday, excluding public holidays) is prohibited;
  - (ii) All other work between 9am and 5pm Monday to Friday and 9am to 3pm on a Saturday and not on a public holiday or any other time;
- (g) Transport each item including but not limited to construction materials, equipment and debris in the manner reasonably directed by the owners corporation;
- (h) Protect the building both internal and external to the Lot from damage from the conduct of the works (including their removal) and from the transportation of construction material, equipment, debris and other material required to conduct and maintain the works, in a manner reasonably acceptable to the owners corporation including but not limited to laying protective mats on common property floors likely to be affected by the transportation of goods or building materials to and from the Lot and ensuring that power tools are not used to cut materials on common property;
- (i) Keep common property access ways to the Lot clean and free from building materials, dust and rubble at all times. No building material or refuse of any kind must be left on common property;

**This is page 49 of a total of 56 pages and is Annexure "A" to the Consolidation of By-Laws/Change of By-Laws form. The seal of THE OWNERS – STRATA PLAN NO 85065 was affixed on the 23<sup>rd</sup> day of August 2019 in the presence of:**

**Names: .....**

**Signatures.....**

**.....**

**Being the persons authorised by Section 273 of the *Strata Schemes Management Act 2015* to attest the affixing of the seal.**

- (j) Remove rubbish from the building arising as a result of the works daily and dispose of the rubbish in a manner approved by the owners corporation and not, unless approved, in any of the rubbish bins for the building;
- (k) Subject to any safety requirements, keep the entrance door, any balcony door or doors, and all windows to the owner's lot, closed at all times while the works are being conducted;
- (l) Ensure that the security of the building is not compromised and that no common property doors are left open for an unreasonable period or left open and not attended;
- (m) Not use common property power or water;
- (n) Give access to the owners corporation's nominee to the Lot to inspect (and if required by the owners corporation to also supervise) the work upon reasonable notice being given.

After work is carried out

7. After carrying out work, the owner must:

- (a) Notify the owners corporation that the work has been completed within 7 days after its completion;
- (b) Give the access to the owners corporation's nominee to the Lot to inspect the work;
- (c) Notify the owners corporation that all damage, if any, to lots and common property caused by the works and not permitted by the approval has been rectified, and provide proof to the satisfaction of the owners corporation. Such notice must be provided to the owners corporation within 28 days of the completion of the work;
- (d) If the work involved:
  - (i) Removing carpet or other soft floor coverings to expose underlying hard floors; or,
  - (ii) The installation or replacement of wood or other hard floors;to an area other than a kitchen, bathroom, or laundry, provide to the owners corporation a report from an acoustical consultant approved by the owners

**This is page 50 of a total of 56 pages and is Annexure "A" to the Consolidation of By-Laws/Change of By-Laws form. The seal of THE OWNERS – STRATA PLAN NO 85065 was affixed on the 23<sup>rd</sup> day of August 2019 in the presence of:**

**Names: .....**

**Signatures.....**

**.....**

**Being the persons authorised by Section 273 of the *Strata Schemes Management Act 2015* to attest the affixing of the seal.**



corporation, that the new flooring has an acoustical star rating of 5 Stars or better, according to the Guideline for Apartment and Townhouse Acoustic Rating promulgated by the Australian Association of Acoustical Consultants;

- (e) If required by the owners corporation:
  - (i) Give to the owners corporation a report from a structural engineer approved by the owners corporation, certifying that the work has not affected the structural integrity of the building, such certification to be in favour of the owners corporation;
  - (ii) Give to the owners corporation a report from a waterproofing expert approved by the owners corporation, certifying that any waterproofing has been installed in accordance with Building Code of Australia and any applicable Australian Standards, such certification to be in favour of the owners corporation;
  - (iii) Give to the owners corporation a report from a duly qualified building consultant or expert approved by the owners corporation, certifying that the work has been completed in compliance with the Building Code of Australia and any applicable Australian Standards, such certification to be in favour of the owners corporation;
  - (iv) Give a post works dilapidation report prepared by the same person who prepared the report in clause 5(e)(ii).

Use of Work

- 8. The owner (or other user of the work) must ensure that the use of the work following completion:
  - (a) Does not unreasonably interfere with the peaceful use or enjoyment of an occupier of another lot or any person lawfully using the common property;
  - (b) Complies with applicable laws, and applicable requirements of the local council.

Repair of any Damage

- 9. The owner must repair any damage caused to any other lot or the common property by the conduct or use of the works, such repairs to be carried out without delay.

Repair and Maintenance

**This is page 51 of a total of 56 pages and is Annexure "A" to the Consolidation of By-Laws/Change of By-Laws form. The seal of THE OWNERS – STRATA PLAN NO 85065 was affixed on the 23<sup>rd</sup> day of August 2019 in the presence of:**

**Names: .....**

**Signatures.....**

**.....**

**Being the persons authorised by Section 273 of the *Strata Schemes Management Act 2015* to attest the affixing of the seal.**

- 10. The owner must maintain and keep in a state of good and serviceable repair the work and any common property affected by the work. The owner must also renew or replace the work where necessary. The provisions of clauses 5 to 7 apply to any work the owner carries out to comply with this clause.

Indemnity

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- 11. The owner indemnifies and keeps the owners corporation indemnified against any loss, claim, cost, legal liability or proceedings in respect of any injury, loss or damage whatsoever to the common property, or other property or person insofar as such injury, loss or damage arises out of the:
  - (a) Performance of the work;
  - (b) Use of the work;
  - (c) Failure to comply the duty to maintain, repair, renew or replace;
  - (d) Performance of any work required to comply with the duty to maintain, repair, renew or replace;
  - (e) Owner’s breach of any part of this by-law.

Insurance

---

- 12. The owner must, if required by the owners corporation, make, or permit the owners corporation to make on the owner’s behalf, any insurance claim concerning or arising from the work, and use the proceeds of any insurance payment made as a result of an insurance claim to complete the work or repair any damage to the building caused by the work.

Bond

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- 13. The owners corporation may apply any part of a bond paid by the owner towards the costs of the owners corporation incurred in repairing any damage caused to common property or any other lot during or as a result of the work, or cleaning any part of the common property as a result of the work.
- 14. The owners corporation must refund the bond, or the remaining balance of it, within 14 days of being notified by the owner that work has been completed and the owners corporation is reasonably satisfied that the owner has complied with the conditions of approving the work.

**This is page 52 of a total of 56 pages and is Annexure “A” to the Consolidation of By-Laws/Change of By-Laws form. The seal of THE OWNERS – STRATA PLAN NO 85065 was affixed on the 23<sup>rd</sup> day of August 2019 in the presence of:**

**Names:.....**

**Signatures.....**

**.....**

**Being the persons authorised by Section 273 of the *Strata Schemes Management Act 2015* to attest the affixing of the seal.**

Breach of this By-Law

---

- 15. If an owner fails to comply or breaches any part of this by-law, then the owners corporation may:
  - (a) Request, in writing, that the owner complies or rectifies the breach within 14 days or such other period as is specified in the notice;
  - (b) If the owner fails to comply with the request in sub clause (a):
    - (i) Without prejudice to any other rights, enter upon any part of the lot, to carry out any work necessary to ensure compliance with this by-law or an order from council, a Court or a Tribunal;
    - (ii) Recover the costs of carrying out work referred to in this clause hereto from the owner;
    - (iii) Recover as a debt any amounts payable by an owner pursuant to this by-law, not paid at the end of one month after demand, together with any simple interest on any outstanding amount at the rate prescribed by Section 85 of the Act, and the expenses of the owners corporation incurred in recovering those amounts.

Costs

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- 16. The owner must pay all costs, fees, and expenses incurred by the owners corporation in considering, negotiating, making, enforcing or undertaking any action, matter or thing required of it in this by-law. Any amount payable by an owner under this clause may be recovered as a debt due and payable by that owner together with interest at the rate prescribed in Section 85 of the Act and the expenses of the owners corporation in recovering those amounts.

**This is page 53 of a total of 56 pages and is Annexure "A" to the Consolidation of By-Laws/Change of By-Laws form. The seal of THE OWNERS – STRATA PLAN NO 85065 was affixed on the 23<sup>rd</sup> day of August 2019 in the presence of:**

**Names:.....**

**Signatures.....**

**.....**

**Being the persons authorised by Section 273 of the *Strata Schemes Management Act 2015* to attest the affixing of the seal.**

### SCHEDULE 3

#### Schedule of approved Minor Renovations and Major Renovations

Date of approval	Lot No.	Name of owner given approval	Approval given by owners corporation or strata committee	Minor or Major Renovation	Brief description of the Minor or Major Renovation

This is page 54 of a total of 56 pages and is Annexure "A" to the Consolidation of By-Laws/Change of By-Laws form. The seal of THE OWNERS – STRATA PLAN NO 85065 was affixed on the 23<sup>rd</sup> day of August 2019 in the presence of:

Names: .....  
Signatures.....

.....  
Being the persons authorised by Section 273 of the *Strata Schemes Management Act 2015* to attest the affixing of the seal.

## DICTIONARY

**Air Conditioning Equipment** means the air conditioner inside a lot or on the roof of the Building and includes air conditioning plant and equipment, pipes, wires, cables, vents and ducts servicing air conditioning plant and equipment.

**Building** means the building and improvements on the land situated at 572-574 Military Road Mosman NSW and comprising a strata titled commercial, retail and residential apartment building.

**Caretaker** means a caretaker appointed by the Owners Corporation to provide management and operation services;

**Common Property** means those areas of the Strata Scheme that are not comprised in any lot.

**Executive Committee** means the executive committee of the Owners Corporation.

**Management Act** means the Strata Schemes Management Act, 1996 as amended.

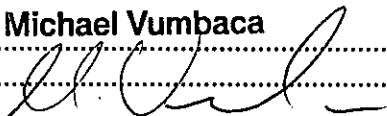
**Manager** means a strata managing agent appointed in respect of the Strata Scheme.

**Original Owner** means D & T Rahme Pty Limited ACN 082 513 835 and Green Street Pty Limited ACN 095 726 006, being the registered proprietors of the land comprised in the Strata Scheme before registration of the strata plan creating same.

**Owners Corporation** means the Owners Corporation formed on registration of the strata scheme for the building.

**Strata Scheme** means the strata scheme created on registration of the strata plan accompanying these by-laws.

This is page 55 of a total of 56 pages and is Annexure "A" to the Consolidation of By-Laws/Change of By-Laws form. The seal of THE OWNERS – STRATA PLAN NO 85065 was affixed on the 23<sup>rd</sup> day of August 2019 in the presence of:

Names: **Michael Vumbaca**  
Signatures: 

Being the persons authorised by Section 273 of the *Strata Schemes Management Act 2015* to attest the affixing of the seal.



### Approved Form 10

### Certificate re Initial Period

The owners corporation certifies that in respect of the strata scheme:

\*that the initial period has expired.

~~\*the original proprietor owns all of the lots in the strata scheme and any purchaser under an exchanged contract for the purchase of a lot in the scheme has consented to any plan or dealing being lodged with this certificate.~~

THE COMMON SEAL by THE OWNERS - )  
STRATA PLAN NO. 85065 was hereunto affixed )  
on the 23rd day of August 2019 )  
in the presence of )  
being the person(s) authorised by Section 273 )  
of the *Strata Schemes Management Act 2015* )  
to attest the affixing of the seal. )



*[Handwritten signature]*  
.....

**Michael Vumbaca**  
.....

Print name

This is page 56 of a total of 56 pages and is Annexure "A" to the Consolidation of By-Laws/Change of By-Laws form. The seal of THE OWNERS – STRATA PLAN NO 85065 was affixed on the 23<sup>rd</sup> day of August 2019 in the presence of:

Names: .....

Signatures.....  
.....

Being the persons authorised by Section 273 of the *Strata Schemes Management Act 2015* to attest the affixing of the seal.

3 October 2019

InfoTrack  
GPO Box 4029  
SYDNEY NSW 2001

Certificate 28614

## **Environmental Planning & Assessment Act 1979**

### **Planning Certificate Section 10.7(2)**

**Property:** 11/572-574 Military Road MOSMAN 2088  
**Title:** LOT: 11 SP: 85065  
**Parish:** Willoughby **County:** Cumberland

**1. The land is affected by the following Local Environmental Plan:**

*Mosman Local Environmental Plan 2012 - Published on the NSW legislation website on 9/12/2011*

#### **Zoning Provisions**

**2. The effect of the Mosman Local Environmental Plan 2012 is to zone the land:**

*Zone B6 - Enterprise Corridor. Attachment No. B6 sets out the purposes for which development is permissible without consent, permissible with consent and prohibited.*

**At the date of this certificate the property is affected by the following prescribed matters:**

**3. Proposed Local Environmental Plan or Planning Proposal.**

*Not affected by any draft Local Environmental Plan or Planning Proposal.*

#### **4. Complying Development.**

*The extent to which the land is land on which complying development may or may not be carried out under each of the codes for complying development because of the provisions of clauses 1.17A (1) (c) to (e), (2), (3) and (4), 1.18 (1) (c3) and 1.19 of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.*

##### **Housing Code.**

*The land is land on which complying development may be carried out under the Housing Code pursuant to State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.*

##### **Low Rise Medium Density Housing Code.**

*The Low Rise Medium Density Housing Code does not apply to this local government area.*

##### **Housing Alterations Code.**

*The land is land on which complying development may be carried out under the Housing Alterations Code pursuant to State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.*

##### **Commercial and Industrial Alterations Code.**

*The land is land on which complying development may be carried out under the Commercial and Industrial Alterations Code pursuant to State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.*

##### **Subdivisions Code.**

*The land is land on which complying development may be carried out under the Subdivisions Code pursuant to State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.*

##### **General Development Code.**

*The land is land on which complying development may be carried out under the General Development Code pursuant to State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.*



**Demolition Code.**

*The land is land on which complying development may be carried out under the Demolition Code pursuant to State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.*

**Commercial and Industrial (New Buildings and Additions) Code.**

*The land is land on which complying development may be carried out under the Commercial and Industrial (New Buildings and Additions) Code pursuant to State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.*

**Container Recycling Facilities Code.**

*The land is land on which complying development may be carried out under the Container Recycling Facilities Code pursuant to State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.*

**Fire Safety Code.**

*The land is land on which complying development may be carried out under the Fire Safety Code pursuant to State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.*

**Rural Housing Code.**

*The Rural Housing Code does not apply to this local government area.*

**Greenfield Housing Code.**

*The Greenfield Housing Code does not apply to this local government area.*

*Disclaimer: This certificate only addresses matters raised in Clauses 1.17 (c) to (e), (2), (3) and (4) and 1.19 of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008. It is your responsibility to ensure that you comply with any other general requirements of the of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008. Failure to comply with these provisions may mean that a Complying Development Certificate issued under the provisions of the of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 is invalid.*

**5. State Environmental Planning Policies.**

*AFFECTED by State Environmental Planning Policies and draft State Environmental Planning Policies (See Attachment No.2).*

**5A. State Environmental Planning Policy (Coastal Management) 2018.**

*Not Affected.*

**6. Do any Development Standards apply to the Land fixing Minimum Land Dimensions for the Erection of a Dwelling House?**

*NO - There are no development standards under Mosman Local Environmental Plan 2012 applying to the land fixing dimensions for the erection of a dwelling house.*

**7. Critical Habitat.**

*The land does not include or comprise critical habitat.*

**8. Land Reserved for Acquisition.**

*No environmental planning instrument, deemed environmental planning instrument or draft environmental planning instrument applying to the land provides for the acquisition of the land by a public authority, as referred to in Section 3.15 of the Environmental Planning and Assessment Act 1979.*

**9. Development Control Plans**

*Mosman Business Centres Development Control Plan dated 29 March 2012 (as amended)*

**10. Contribution Plan**

*AFFECTED by Mosman Contributions Plan 2018 (in force from 14 June 2018)*

**11. Coastal Management Act 2016**

*The owner (or any previous owner) of the land has not consented in writing to the land being subject to an annual charge under section 496B of the Local Government Act 1993, for coastal protection services that relate to existing coastal protection works (within the meaning of section 553B of that Act).*

**12. Coal Mine Subsidence Compensation Act 2017.**

*NOT affected by the Coal Mine Subsidence Compensation Act 2017, proclaiming land to be a mine subsidence district.*

**13. Road Widening or Realignment.**

*NOT affected by any road widening or road realignment under (1) Division 2 of part 3 of the Roads Act 1993; or (2) any Environmental Planning Instrument; or (3) any resolution of Council. The Roads & Maritime Authority may have proposals that are not referred to in this item. For advice about affectation by Roads & Maritime Authority proposals, contact Roads and Maritime Authority.*

**14. Council and Other Public Authority Policies on Hazard Risk Restrictions.**

*The land is not affected by a policy;  
i) adopted by the Council, or*

*ii) adopted by any other public authority and notified to the Council for the express purpose of its adoption by that authority being referred to in planning certificates issued by the council, that restricts the development of the land because of the likelihood of land slip, tidal inundation, subsidence, acid sulfate soils or any other risks*

*The absence of such a policy does not necessarily mean that no such risk exists.*

*It should be noted that Part 7.5 of the Mosman Business Centres Development Control Plan provides as follows*

*All development in low lying areas must not have a basement level less than 4m AHD.*

**15. Flood related development control information.**

*Development on the land is not subject to flood related development controls.*

**16. Matters Arising Under the Contaminated Land Management Act 1997**

*(a) The land is NOT declared to be significantly contaminated land within the meaning of that Act.*

*(b) The land is NOT subject to a management order within the meaning of that Act.*

*(c) The land is NOT the subject of an approved voluntary management proposal within the meaning of that Act.*

*(d) The land is NOT subject to an ongoing maintenance order within the meaning of that Act.*

*(e) The land is NOT the subject of a site audit statement within the meaning of that Act.*

**17. Nation Building and Jobs Plan (State Infrastructure Delivery ) Act 1997**

*The land is NOT affected by an order issued under the Nation Building and Jobs Plan (State Infrastructure Delivery) Act 2009.*

**18. Heritage Item.**

*DOES NOT contain a listed heritage item under Mosman Local Environmental Plan 2012.*

**19. Conservation Area.**

*NOT within a Heritage Conservation Area under Mosman Local Environmental Plan 2012.*

**20. Bush Fire Prone Land.**

*The land is not shown as bush fire prone in Council's records.*

**21. Property Vegetation Plans.**

*The land is not subject to a property vegetation plan approved under Part 4 of the Native Vegetation Act 2003 (and that continues in force).*

**22. Orders Under Trees (Disputes Between Neighbours) Act 2006**

*The land is not subject to an order under the Trees (Disputes Between Neighbours) Act 2006.*

**23. Directions under Part 3A.**

*The land is not subject to a direction by the Minister in force under section 75P(2)(c1) of the Act.*

**24. Conditions affecting seniors housing.**

*(a) The land is not subject to a site compatibility certificate issued under clause 25 of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*

*(b) The land is not subject to a development consent granted pursuant to the provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, granted after 11 October 2007.*

**25. Site compatibility certificates for infrastructure.**

*The land is not subject to a site compatibility certificate issued under clause 19 of State Environmental Planning Policy (Infrastructure) 2007.*

**26. Site compatibility certificates and conditions for affordable rental housing.**

*a) The land is not subject to a site compatibility certificate issued under clause 37 of State Environmental Planning Policy (Affordable Rental Housing) 2009.*

*b) The land is not subject to any terms of a kind referred to in clause 17(1) or 37(1) of State Environmental Planning Policy (Affordable Rental Housing) 2009 that have been imposed as a condition of development consent to a development application in respect of the land.*

**27. Biobanking Agreements.**

*The land is not a biodiversity stewardship site under a biodiversity stewardship agreement under Part 5 of the Biodiversity Conservation Act 2016.*

**27A. Affected building notices and building product rectification orders.**

*(1) There is no affected building notice of which the council is aware that is in force in respect of the land.*

*(2) There is no building product rectification order of which the council is aware that is in force in respect of the land and that has not been fully complied with. Further, there is no outstanding notice of intention to make a building product rectification order of which the council is aware in respect of the land.*

**Note:** While this certificate indicates the zoning of the land, it is suggested the relevant Planning Instrument be inspected at Council's Customer Support Desk to provide an overall view of the area.

**Council has made no inspection of the property for the purpose of this certificate. The purchaser should satisfy themselves that there have been no breaches of development consent.**

**Document Details and References**

**Certificate Fee:** \$53.00

**Fee Paid:** \$53.00

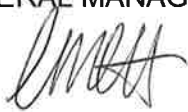
**Receipt Date:** 3/10/19

**Receipt No.:** 742195485

**Applicant's Reference:**

Dominic Johnson  
GENERAL MANAGER

Per:



(Evan Matthews.)

**Extract from Mosman Local Environmental Plan 2012**

**Land Use Table**

<b>Zone B6 Enterprise Corridor</b>	
<b>1 Objectives of zone</b>	<ul style="list-style-type: none"> <li>To promote businesses along main roads and to encourage a mix of compatible uses.</li> <li>To provide a range of employment uses (including business, office, retail and light industrial uses).</li> <li>To maintain the economic strength of centres by limiting retailing activity.</li> <li>To provide for residential uses, but only as part of a mixed use development.</li> <li>To ensure a reasonable level of residential amenity within sites in terms of noise, air quality and outdoor landscaped open space.</li> </ul>
<b>2 Permitted without consent</b>	Home occupations.
<b>3 Permitted with consent</b>	Boarding houses; Business premises; Centre-based child care facilities; Community facilities; Dual occupancies; Food and drink premises; Function centres; Garden centres; Group homes; Hardware and building supplies; Home businesses; Hostels; Hotel or motel accommodation; Landscaping material supplies; Light industries; Medical centres; Multi dwelling housing; Neighbourhood shops; Office premises; Oyster aquaculture; Passenger transport facilities; Places of public worship; Plant nurseries; Recreation areas; Recreation facilities (indoor); Residential flat buildings; Respite day care centres; Roads; Self-storage units; Serviced apartments; Signage; Tank-based aquaculture; Timber yards; Vehicle repair stations; Vehicle sales or hire premises; Veterinary hospitals; Warehouse or distribution centres
<b>4 Prohibited</b>	Pond-based aquaculture; Any development not specified in item 2 or 3.

**Relevant State Environmental Planning Policies**

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**State Environmental Planning Policies (SEPP)**

SEPP No. 19 - Bushland in Urban Areas  
SEPP No. 21 – Caravan Parks  
SEPP No. 33 – Hazardous and Offensive Development  
SEPP No. 50 – Canal Estate Development  
SEPP No. 55 - Remediation of Land  
SEPP No. 64 - Advertising and Signage  
SEPP No. 65 - Design Quality of Residential Apartment Development  
SEPP No. 70 – Affordable Housing (Revised Schemes)  
SEPP (Affordable Rental Housing) 2009  
SEPP (Building Sustainability Index: BASIX) 2004  
SEPP (Coastal Management) 2018 (only land within the coastal zone)  
SEPP (Concurrences) 2018  
SEPP (Educational Establishments and Child Care Facilities) 2017  
SEPP (Exempt and Complying Development Codes) 2008  
SEPP (Housing for Seniors or People with a Disability) 2004  
SEPP (Infrastructure) 2007  
SEPP (Mining, Petroleum Production and Extractive Industries) 2007  
SEPP (Miscellaneous Consent Provisions) 2007  
SEPP (Primary Production and Rural Development) 2019  
SEPP (State and Regional Development) 2011  
SEPP (State Significant Precincts) 2005  
SEPP (Vegetation in Non-Rural Areas) 2017  
Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

**Draft State Environmental Planning Policies (Draft SEPP)**

Draft SEPP (Competition) 2010  
Draft SEPP (Short-term Rental Accommodation) 2019



EMMA C LEE  
18 SEAFORTH CRESCENT  
SEAFORTH NSW 2092

Our reference: 7112087756446  
Phone: 13 28 66  
21 August 2019

## Your foreign resident capital gains withholding clearance certificate

- › Purchasers are not required to withhold and pay an amount
- › Provide a copy to the purchaser and retain a copy for your records

Hello EMMA,

We have decided that purchasers are not required to withhold and pay an amount. Your certificate is below:

Notice number	2410248286280
Vendor name	EMMA CATHERINE LEE
Previous Vendor name	
Vendor address	18 SEAFORTH CRESCENT SEAFORTH NSW 2092
Clearance Certificate Period	21 August 2019 to 21 August 2020

The Commissioner may withdraw this clearance certificate at any time if we obtain further information indicating you are a foreign resident.

Yours sincerely,  
**James O'Halloran**  
Deputy Commissioner of Taxation

### NEED HELP

Learn more about foreign resident capital gains withholding at [ato.gov.au/FRCGW](http://ato.gov.au/FRCGW)

### CONTACT US

In Australia? Phone us on  
**13 28 66**

If you're calling from overseas, phone **+61 2 6216 1111** and ask for **13 28 66** between 8:00am and 5:00pm Australian Eastern Standard time, Monday to Friday.



**LEASE**  
New South Wales  
Real Property Act 1900

Leave this space clear. Affix additional pages to the top left-hand corner.

**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.

**STAMP DUTY** Office of State Revenue use only

(A) **TORRENS TITLE**

Part being Shop 2 , 572 Military Rd. Mosman NSW 2088  
Comprised in Certificate of Title Folio Identifier 11/SP85065

(B) **LODGED BY**

Document Collection Box	Name, Address or DX and Telephone John A Diacopoulos Solicitor Level 6 175 Macquarie Street, Sydney NSW 2000 Tel 8224 0900  Reference: JAD	<b>CODE</b>  L
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(C) **LESSOR**

Min Li

The lessor leases to the lessee the property referred to above.

(D) Encumbrances (if applicable):

1. 2. 3.

(E) **LESSEE**

Limin Xu

(F) **TENANCY:**

- (G) 1. **TERM** Five (5) years  
2. **COMMENCING DATE** 1<sup>st</sup> June 2015  
3. **TERMINATING DATE** 31<sup>st</sup> May 2020  
4. With an **OPTION TO RENEW** for a period of Five (5) set out in clause 3.3 of Annexure "A" hereto  
5. With an **OPTION TO PURCHASE** set out in clause Not applicable  
6. Together with and reserving the **RIGHTS** set out in clause Not applicable  
7. Incorporates the provisions or additional material set out in **ANNEXURE(S)** "A" hereto  
8. Incorporates the provisions set out in **MEMORANDUM** filed in the Department of Lands, Land and Property Information Division as No(s) Not applicable  
9. The **RENT** is set out in clause 2 of Annexure "A" hereto

Department of Lands  
Land and Property Information Division

DATE 04 / 06 / 2015  
dd mm yyyy

SEE ANNEXURE HERETO FOR EXECUTION BY LESSOR AND LESSEE

(H) I certify that the lessor, with whom I am personally acquainted or as to whose identity I am otherwise satisfied, signed this lease in my presence. Certified correct for the purposes of the Real Property Act 1900 by the lessor.

Signature of witness:

Signature of Lessor:

Name of witness:

Address of witness:

Note: where applicable, the lessor must complete the statutory declaration below.

I certify that the lessee, with whom I am personally acquainted or as to whose identity I am otherwise satisfied, signed this lease in my presence. Certified correct for the purposes of the Real Property Act 1900 by the lessee.

Signature of witness:

Signature of Lessee:

Name of witness:

Address of witness:

(I) STATUTORY DECLARATION

I, solemnly and sincerely declare that: -

- 1. The time for the exercise of option to renew/option to purchase in expired lease No. has ended;
- 2. The lessee under that lease has not exercised the option.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths Act 1900 and I certify this lease correct for the purposes of the Real Property Act 1900.

Made and subscribed at in the State of

on in the presence of: -

Signature of witness:

Signature of lessor:

Name of witness:

Address of witness:

Qualification of witness:

## ANNEXURE "A" TO THE LEASE

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

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

**"Appurtenance"** includes any drain, pipe, opening, duct, basin, sink, toilet or urinal;

**"Australian Institute"** means the Australian Property Institute Inc. NSW Division;

**"Authority"** includes any government, any semi, local or municipal government, any statutory, public or any other person, authority, instrumentality, tribunal, department, entity or body;

**"Bank Guarantee"** means an irrevocable and unconditional undertaking by an Australian bank to pay an amount or amounts of money to the Lessor upon demand and containing such terms and conditions as are acceptable to the Lessor and which the Lessor may determine in its absolute discretion which has no expiry or sunset date and has no restriction or condition against the Lessor assigning and transferring such bank Guarantee;

**"Building"** includes the Land and Premises and any improvements from time to time existing on the Land and any other improvements which the Lessor (as owner, lessee or licensee) develops in conjunction with the Land and the Lessor's Property;

**"Claim"** includes any claim, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding, right, cross claim, set off (equitable or otherwise) or cause of action, claim for compensation and claim for abatement of rent obligation;

**"Commencement Date"** means the commencing date of this Lease as set out on page 1 and in Item 8;

**"Common Areas"** means those parts of the Building and/or the Land, if any, which the Lessor intends for common use;

**"Cost" and "Costs"** includes any reasonable cost, charge, expense, outgoing, premium, payment, liability or other expenditure of any nature whatever (whether direct, indirect or consequential and whether accrued or paid) including where appropriate all Rates and all legal fees;

**"CPI Adjustment Date"** means each date specified in Item 21;

**"CPI"** means the Consumer Price Index Sydney All Groups published by the Australian Bureau of Statistics or, if the Consumer Price Index is suspended or discontinued, any index officially substituted for it;

**"Default Rate"** means the rate, which is 3% per annum above the overdraft rate charged as at the due date for payment of the relevant monies by the Lessor's bank for commercial unsecured overdrafts in excess of \$100,000.00. A notice by any manager of the Lessor's Bank shall in the absence of manifest error be conclusive evidence of such rate;

**"Guarantor"** means jointly and severally each person (if any) named in this Lease (as identified in Item 3) and includes any:

- (a) successor or permitted assign of any corporate Guarantor;
- (b) personal representatives, estate, executor, administrator or permitted assign of any natural person that is a Guarantor; and
- (c) person that may from time to time be included as a Guarantor;

**"Item"** means the relevant item number as set out in the Rent Schedule;

**“Land”** means the land specified in Item 4;

**“Law”** includes any requirement of any statute, rule, regulation, proclamation, ordinance or by-law, present or future and whether state, federal or otherwise and includes any amendment, replacement, substitution or augmentation of any of them and including any recommendation or standard issued by Standards Australia;

**“Lessee”** means the Lessee named in this Lease (as identified in Item 2) and includes in the case of a:

- (a) corporation, the Lessee, its successors and permitted assigns;
- (b) natural person, the Lessee, his executors, estate, personal representatives, administrators and permitted assigns;

**“Lessee’s Business”** means the permitted use of the Premises specified in Item 15;

**“Lessee’s Contribution”** means the percentage, specified in Item 13, of the Outgoings;

**“Lessee’s Employees”** means each of the Lessee’s employees, agents, contractors, consultants, customers, workmen, invitees, clients, visitors or others (whether with or without invitation) sub-lessees, licensees and concessionaires or others;

**“Lessee’s Property”** includes all items, stock, equipment, fixtures and property on or about the Premises (including prior to the Commencement Date) which are not the Lessor’s Property;

**“Lessor”** means the Lessor named in this Lease (as identified in Item 1) and includes in the case of a:

- (a) corporation, the Lessor, its successors and assigns;
- (b) natural person, the Lessor, his/her estate, executors, administrators and assigns;

**“Lessor’s Property”** includes:

- (a) all plant and equipment, mechanical, electrical or otherwise, fittings, fixtures, furniture, furnishings of whatever nature, including window, floor, ceiling and wall coverings, blinds and light fittings from time to time in the Premises or any part of them and owned by the Lessor;
- (b) all stop cocks, fire hoses, hydrants, other fire prevention aids and all fire fighting systems from time to time located in the Premises or which may service the Premises including in Common Areas near the Premises;

**“Lettable Area”** means the area of the Premises determined in accordance with clause 14;

**“Notice”** means any notice in writing and any other written communication;

**“Normal business hours”** shall mean the hours of 9.00 a.m. to 5.00 p.m. Monday to Friday and on which businesses are ordinarily open for business in the State;

**“Officer”** includes any director, alternate director, secretary, assistant secretary, executive officer, attorney and managing agent of the particular Party;

**“Outgoings”** means the outgoings defined in clause 16.1;

**“Outgoings Year”** means the 12 month period ending on 30 June in each year or on another day specified in a notice the Lessor gives the Lessee;

**“Person”** includes any corporation and vice versa;

**“Property Council”** means the Property Council of Australia Limited (A.C.N. 008 474 422) or any entity in replacement of it;



**“Premises”** means that part of the premises as described in Item 5 and includes any of the Lessor’s Property from time to time in them;

**“Proposed Work”** includes any proposed work, alteration, addition or installation in or to the Premises and/or to the Land and/or to the Building and/or to the Services and/or the Lessor’s Property and/or to the Lessee’s Property by or on behalf of the Lessee;

**“Rates”** includes all rates, taxes, charges, Costs, assessments, duties, impositions, levies, surcharges, fees, bank debits, tax or financial institution duty of any Authority or of any Law payable by the Lessor in connection with the Land, Building and Premises but excludes any:

- (a) tax on the assessable income of the Lessor;
- (b) rates assessed directly in respect of the Premises and paid by the Lessee; or
- (c) rates assessed directly in respect of any other premises in the Building which are separately leased or licensed and for which the Lessor is not ultimately liable;

**“Rent”** means the yearly amount in Item 11 and each of the rates and other monies payable from time to time by or on behalf of the Lessee as varied under this Lease.

**“Rent Day”** means the Commencement Date, and following such date the first day of each month;

**“Rent Free Period”** means the period, if any, in Item 12 for the purposes of clause B of the Rent Schedule;

**“Rent Schedule”** means the Rent Schedule to this Lease being part of Annexure “A” to this Lease;

**“Requirements”** includes any requirement, notice, condition, approval, consent, order, direction, recommendation, stipulation or similar notification received from or given by any Authority or pursuant to any Law, whether in writing or otherwise, and despite to whom such Requirement is addressed or directed;

**“Rules”** means the rules of the Building and/or the Premises and/or the Land (if any) including the Owner’s Corporation, relating to the management, care and the conduct of the Tenants, the Lessee and/or the Lessee’s Employees, as from time to time notified in writing by the Lessor to the Lessee;

**“Services”** includes all services or systems of any nature from time to time available to the Building and/or the Premises, and includes the provision of any electronic medium, energy source, lighting, gas, fuel, power, water, sewerage, drainage, loading docks, plant rooms, storage areas, fire services, sprinkler systems or devices, electrical items, smoke detectors, lifts, escalators, air-conditioning and the fittings, fixtures, appliances, plant and equipment utilised for any such Services, and includes any services or systems from time to time utilised for access to the Building and/or the Premises;

**“State”** means the state or territory of Australia specified in Item 6;

**“Tenant”** means any lessee, licensee or any other occupant of any part of the Land and or Building;

**“Term”** means the term of this Lease as specified in Item 7 and shall be deemed to comprise that period from and including the Commencement Date to and including the Termination Date;

**“Termination Date”** means the terminating date of this Lease as specified on page 1 and in Item 9;

**“This Lease” or “the Lease”** means and includes this lease and all schedules, appendices, annexures and exhibits to it and the Rules (if any) from time to time current.

## 1.2 Interpretation

- (a) Words expressed in the singular include the plural and vice versa.



- (b) Words expressed in one gender include the other genders, as is appropriate in the context.
- (c) The reference to "person" includes a corporation and vice versa.
- (d) Any headings or subheadings in this Lease are inserted for guidance only and do not govern the meaning or construction of this Lease or of any provision contained in this Lease.
- (e) References to statutes, regulations, ordinances and by-laws when contained in this Lease include amendments, re-enactments or consolidations of any of them.
- (f) Covenants and powers implied by statute are excluded from this Lease, unless any such covenant or power cannot be excluded by force of statute or is expressly incorporated in this Lease.
- (g) When a covenant contained in this Lease prohibits the Lessee from doing anything, it also prohibits the Lessee from authorising or allowing it to be done by any other person.
- (h) If under the provisions of this Lease or under any notice or demand anything is required to be done on a day which is not a business day, the day or the last day for compliance is deemed to be the immediately following business day.
- (i) In the event of there being two or more lessors, lessees or guarantors under this Lease (including whilst the Lease or the reversion is held by legal personal representatives, successors or assigns) each of them is jointly and severally liable to perform covenants and obligations under this Lease.
- (j) When there are two or more lessors or lessees, any conduct under or in respect of this Lease, including the exercise of any entitlement or taking any action under this Lease or a provision of this Lease, shall be undertaken by all of the lessors or all of the lessees jointly, unless this Lease expressly provides otherwise.
- (k) If any provision contained in this Lease is or becomes legally ineffective, under the general law or by force of legislation, the ineffective provision shall be severed from this Lease which otherwise continues to be valid and operative.
- (l) It is agreed that this Lease contains the whole of the agreement between the Lessor and the Lessee relating to the Premises.
- (m) The agreement relating to the Premises does not include any other, collateral or implied, agreement or terms, which are not expressly included or incorporated in this Lease, whether arising through representations preceding this Lease or during negotiations relating to this Lease.

## **2. RENT**

### **2.1 Rental instalments**

The Lessee covenants to pay Rent to the Lessor by equal monthly instalments (and the relevant proportion for any part of a month) in advance on each Rent Day and in such manner and at such place as the Lessor advises from time to time.

### **2.2 Fixed rent increases**

If an amount or percentage is specified in Item 20, then the Rent will be increased from and including each date in Item 20 by the percentage or to the amount set against the date.

### **2.3 CPI adjustment dates**

If dates are specified in Item 21, then the Rent will be adjusted in accordance with the following formula:



$$\text{Rent} = (A/B) \times C$$

Where:

A is the Index Number last published before the CPI Adjustment Date,

B is the Index Number last published at least 12 months preceding the CPI Adjustment Date.

C is the Rent payable for the year (if part year then adjusted to a 365 day year amount) immediately preceding the CPI Adjustment Date.

Index Number is:

- (a) the Consumer Price Index Sydney All Groups number published by the Australian Bureau of Statistics; or
- (b) if the Consumer Price Index is suspended or discontinued then the index officially substituted for it.

As from and including the CPI Adjustment Date the Lessee must pay the difference between what the Lessee has paid on account of Rent and the Rent for the period from and including the relevant CPI Adjustment Date, provided that the adjusted Rent payable as calculated by this clause shall not be less than the Rent payable for the year immediately preceding the CPI Adjustment Date, except in the case of a retail lease within the meaning of the Retail Leases Act 1994 (NSW).

#### 2.4 Market review dates

If dates are specified in Item 22, then the Rent will be adjusted in accordance with a market review conducted as follows:

- (a) The Lessor must give the Lessee a notice stating the Lessor's assessment of the current annual market rent of the Premises on each Market Review Date at any time before the next Market Review Date and if there is no such date, then within 6 months;
- (b) The Rent from and including the relevant Market Review Date is the amount stated in the Lessor's notice unless the Lessee gives the Lessor a notice, within 21 days after the Lessor's notice is given, disagreeing with that amount;
- (c) If the parties do not agree on the current annual market rent of the Premises on the relevant Market Review Date within 21 days after the notice under clause 2.4(a) is given, then it must be decided by a valuer who:
  - (i) acts as an expert and not as an arbitrator and whose decision is final and binding;
  - (ii) is appointed by the parties (but if they do not agree on who to appoint within 21 days after the notice under clause 2.4(a) is given, that valuer is to be nominated at either party's request by the president of the Australian Institute of Valuers);
  - (iii) is a full member of at least five years' standing of that Institute;
  - (iv) at the time of appointment is both experienced and actively engaged in valuing similar retail premises; and
  - (v) must be instructed to calculate the annual market rent as follows:
    - (1) on the basis that the premises are available for leasing with vacant possession by a willing lessor to a willing lessee for a term equal to the whole term of this Lease and any additional option for renewal;
    - (2) having regard to the permitted use of the Premises;
    - (3) on the basis of the terms and conditions contained in this Lease (other than the amount of rent reserved in this Lease, but including the provisions for rent review);

- (4) on the basis that:
- (i) the Premises are fit for immediate occupation and use by the Lessee;
  - (ii) the Lessee's lease covenants and obligations shall have been fully performed at the Review Date;
- (5) without taking into account:
- (i) any improvements or fixtures erected or installed at the Lessee's expense which the Lessee is permitted or required to remove at the termination of this Lease, except for permanent structural improvements to the Premises installed at the Lessee's expense which the Lessee is not permitted to remove at the termination of this Lease, which shall be taken into account;
  - (ii) any goodwill attributable to the Premises through the Lessee's business activity;
  - (iii) that the Lessee has been in occupation of the Premises;
  - (iv) any relocation costs which would be incurred by the Lessee when moving to other premises;
  - (v) any lease incentive, concession or inducement paid, given or provided by the Lessor to or on behalf of the Lessee in relation to the grant of this Lease; and
  - (vi) any rent free period provided by lessors of comparable premises including but not limited to, for the fitting out of premises.
- (6) having regard to the rental values of comparable premises.
- 7(d) Except in the case of a retail lease within the meaning of the Retail Leases Act 1994 (NSW), the Rent as determined under this clause 2.4 will be the greater of:
- (1) the Rent as determined by the valuer under this clause 2.4; and
  - (2) the Rent in the 12 month period immediately preceding the Market Review Date.
- (e) The Lessor and the Lessee must pay the valuer's costs in equal shares;
- (f) Until the Rent is agreed or decided under this clause 2.4, the Lessee must pay the 110% of the Rent applicable immediately before the relevant Market Review Date by equal monthly instalments, on account of the Rent from the relevant Market Review Date; and
- (g) On the first Rent Day after the Rent is agreed or decided under this clause 2.4, the Lessee must pay the Lessor (or the Lessor must credit the Lessee with) the difference between what the Lessee has paid on account of Rent and the Rent for the period from and including the relevant Market Review Date to but excluding that Rent Day.

## 2.5 Punctuality

The Lessee expressly agrees to make all payments due under this Lease, including for Rent and Outgoings, punctually on the date when each payment is due and shall not withhold or be entitled to withhold the whole or part of any such payment by way of deduction, set-off, counterclaim or otherwise.

## 2.6 Rent free period

No rent free period applicable.





## 2.7 Default

If the Lessor exercises or is entitled to exercise any of the Lessor's rights clause 10, the Lessee shall immediately pay to the Lessor the Rent which, but for clause 2.6, would have been payable in respect of the Rent-Free Period and the Rent-Free Period shall immediately cease and be of no effect. The Lessee shall also be required and obligated from such date to pay Rent and such other monies payable under this Lease.

## 2.8 Security Deposit and rent free period

To avoid doubt, the Lessee acknowledges that the Lessor may apply the Bank Guarantee or Bond provided under clause 13 in complete or partial satisfaction of any obligation of the Lessee arising from the operation of clause 2.7.

## 3. TERM

### 3.1 Term of Lease

Subject to and upon the provisions, restrictions, reservations and conditions of this Lease, the Lessor leases to the Lessee and the Lessee accepts the Premises for the Term.

### 3.2 Holding over

If in its absolute discretion the Lessor permits the Lessee to continue to occupy the Premises beyond the Termination Date (otherwise than pursuant to the grant of a further lease) then:

- (a) the Lessee shall do so as a monthly tenant only at a total rental payable monthly in advance, the first of such payments to be made on the day following the Termination Date, and being an amount equal to one-twelfth of the aggregate of the Rent and any other monies payable by the Lessee to the Lessor pursuant to this Lease as at the Termination Date;
- (b) the amount and rate of such Rent or any part of it for the monthly tenancy may be reviewed whenever the Lessor determines it appropriate in its absolute discretion;
- (c) the monthly tenancy so created shall be determinable at any time by either the Lessor or the Lessee by one (1) month's notice given to the other, to expire on any date, but otherwise the tenancy shall continue on the same terms and conditions so far as applicable to a monthly tenancy as are contained in this Lease. Where the Lessee is in default in the observance or performance of any of its obligations, then such monthly tenancy may be determined by the Lessor giving notice to the Lessee expiring at any time after the expiration of seventy-two (72) hours from the date of service of such notice.

### 3.3 Option

The Lessor must grant a new lease under this clause 3.3 on the Termination Date to commence on the next day if:

- (a) the Lessee gives the Lessor a notice stating that it wants a new lease of the Premises for the term first specified in Item 10 and asking the Lessor to provide to the Lessee two (2) copies of the new Lease to be entered into;
- (b) the Lessor receives that notice within the period from and including the day that is six (6) months before the Termination Date to, but excluding the day, that is three (3) months before the Termination Date;
- (c) when the Lessee gives that notice, and until the Termination Date, the Lessee is not in breach of this Lease;
- (d) the Lessee delivers to the Lessor before the Termination Date security in connection with the Lessee's compliance with its obligations under the new lease, on the same terms as any given in connection with the Lessee's compliance with its obligations under this Lease;



- (e) the Guarantor enters into the guarantee contained in the new Lease;
- (f) two (2) copies of the new Lease (to be provided by Lessor) duly executed by the Lessee and Guarantor and all monies payable to the Lessor under the new lease are returned to the Lessor promptly;
- (g) there are no outstanding breaches under this Lease at any time between the date of the Lessor's receipt of the notice under clause 3.3(b) and the Termination Date; and
- (h) all Costs of the Lessor in relation to the new lease have been received by the Lessor.

### 3.4 Renewal lease

The new lease is to be identical with this Lease except that:

- (a) if the particulars of the new lease are the only particulars specified in Item 10, these clauses 3.3 to 3.4 inclusive and Item 10 are deleted;
- (b) if particulars of more than one new lease are specified in Item 10, the particulars of the new lease first specified are deleted from Item 10;
- (c) the Commencement Date, the Term, the Termination Date, the dates and amounts or percentages of set rent increases, the Market Review, CPI Adjustment Dates, the redecoration requirements and dates and all other details are to be those specified in or to be determined under the respective Items for each further term; and
- (d) the Rent on the commencement date of the new lease is to be decided by the method and procedure in Item 19.

## 4. USE OF PREMISES AND BUILDING

### 4.1 Permitted use

The Lessee shall:

- (a) not without the prior written consent of the Lessor (which consent may be withheld in the absolute discretion of the Lessor) use the Premises for any purpose other than that specified in Item 15;
- (b) at all times conduct the Lessee's Business in the Premises;
- (c) not use the Premises for the purposes of a residence;
- (d) not keep any animals or birds in the Premises or the Building;
- (e) at its own Cost keep the Premises free and clear of pests, insects and vermin and to undertake each three (3) months or more frequently as required by the Lessor treatment and fumigation of the Premises to the satisfaction of the Lessor to ensure that the Premises are free from pests, insects and vermin;
- (f) not (and disregarding any other provision of this Lease or of any consent or of any permission granted pursuant to this Lease) do or carry on in the Premises or any part of them any harmful or offensive trade, business or occupation or anything whatever which shall or may cause contamination, annoyance, nuisance, damage or disturbance to the occupiers or owners of any nearby premises or to the Lessor or to any Tenant;
- (g) not hold any auction, bankruptcy or fire sale on the Premises;
- (h) not prepare or cook food except in any areas which may be provided and are specifically designed and approved by the relevant Authority and which are approved by the Lessor for that purpose; and

- (i) not open any external windows of the Building, in the case where the Premises consists of a high rise building.

#### 4.2 No warranty as to use

The Lessor gives no warranty (either present or future) as to the condition, state of repair, suitability or zoning of the Premises or the use to which the Premises may be put. The Lessee shall:

- (a) be deemed to have accepted this Lease with full knowledge of and subject to any prohibitions or restrictions on the use of the Premises from time to time under or in pursuance of any Laws or Requirements and on the basis that the Lessor is not responsible for any alterations or additions, structural or otherwise, to the Premises or the Building from the Lessee's lease over the Premises;
- (b) obtain, maintain, comply with and observe at the Lessee's costs all Requirements and Laws and at the Lessee's cost apply for and obtain all consents or approvals from all Authorities which may from time to time be necessary or appropriate for the Lessee's Business or the Premises;
- (c) not by any act or omission cause or permit any consent or approval as referred to in clause 4.2(b) to lapse or be revoked; and
- (d) at its Cost attend to all works, alterations and additions (structural or otherwise) and other monies payable as required by any Requirement, Authority or any Law and subject to the consent of the Lessor under clause 5.7.

#### 4.3 Compliance with Laws and Requirements

- (a) The Lessee shall:
  - (i) comply with and observe at the Lessee's own Cost all Laws and all Requirements in relation to or affecting:
    - (A) the Premises or any of the Lessee's Property installed in them; and/or
    - (B) the use or occupation of the Premises from time to time, including such as arise as a result of the sex or number of persons in the Premises,whether or not any such Laws or Requirements are addressed to or required to be complied with by either or both of the Lessor and the Lessee or by any other person. Where any such Laws or Requirements are notified to or served upon the Lessee, the Lessee shall forthwith provide a complete copy of them to the Lessor; and
  - (ii) before complying with any Laws or Requirements as referred to in this clause 4.3 obtain the written consent of the Lessor and otherwise observe the provisions of this Lease.
- (b) The Lessor may:
  - (i) (without prejudice to any of the Lessor's other rights in respect of non compliance) elect at the Lessee's Cost to comply with any such Laws or Requirements (as referred to in this clause 4.3) either in part or whole, including where the Lessee fails to comply within the appropriate time with any of its obligations; and
  - (ii) where the Lessor does exercise any rights as referred to in Paragraph 4.3(b)(i), elect to have the balance of any such Laws or Requirements complied with by the Lessee.
- (c) The Lessee shall be responsible for, and shall bear the costs associated with, any structural alterations or additions caused by, contributed to or arising from the nature of the Lessee's Business, the number or sex of the Lessee's Employees or from any deliberate or negligent act or omission on the part of the Lessee or of the Lessee's Employees.



- (d) The Lessee shall upon demand pay to the Lessor all Costs incurred by or on behalf of the Lessor in complying with any such Laws or Requirements as referred to in this clause 4.3 as if such money were Rent.

#### 4.4 Overloading

The Lessee shall not:

- (a) place or store any heavy articles or materials on any part of the Building without the prior written consent of the Lessor, which consent shall only be given where the articles or materials are reasonably necessary and proper for the conduct of the Lessee's Business and are of such nature and size as will not, in the Lessor's opinion, cause or be likely to cause any structural or other damage to the floors or walls or any other part of the Premises or of the Building. The Lessor shall in all cases be entitled to prescribe the maximum weight for the proper location of such heavy articles or materials in the Premises or the Building, and any damage done to the Building or any part of it by taking in or removing them or during the time they are in the Building shall be made good and/or paid for upon demand by the Lessee (as appropriate). Before any heavy article or material (including any safe) is moved into or out of or within the Building, at least twenty-four (24) hours' prior notice of the intention to move such heavy article or material shall be given by the Lessee to the Lessor and such movement shall if required by the Lessor only be carried out under the supervision of the Lessor. The Lessor may direct the routing, installation and location of all heavy articles and materials and the Lessee shall comply with all such directions. Where such moving is done outside the hours during which access to the Building is freely available the Lessee shall reimburse the Lessor on demand for the reasonable Costs incurred by the Lessor in its supervision; or
- (b) install any equipment or system in the Premises that overloads or may overload the electrical or other Services to the Premises. If the Lessor at the request of the Lessee upgrades the Services to accommodate any equipment or system which the Lessee wishes to install, the Lessee shall pay to the Lessor upon demand the entire Cost to the Lessor of such alterations (including consultants' fees) and the Lessor may require the Lessee to deposit with the Lessor the estimated Cost of them before any such alterations are commenced. The Lessor gives no warranty as to the suitability of any such alterations.

#### 4.5 Air-conditioning and fire alarm equipment

- (a) Where any air-conditioning or fire alarm system of the Lessor is installed in the Premises, the Lessee shall not in any way interfere with any such system and shall not in any manner obstruct or hinder access to it.
- (b) Notwithstanding 4.5(a) the Lessee shall at its own expense and all costs be responsible for the servicing, up keeping, replacement and maintenance of the air conditioning plant and equipment in the leased premises.
- (c) Notwithstanding 4.5(a) and 4.5(b) the Lessor does not warranty that any air condition that is currently installed is functioning or serviceable and it shall be the Lessees responsibility to service and maintain any such air condition at its own expense.

#### 4.6 Use of appurtenances

The Lessee shall:

- (a) not use the Appurtenances in the Premises for any purpose other than those for which they were designed;
- (b) not place in the Appurtenances any substances which they were not designed to receive;
- (c) pay to the Lessor any reasonable Costs of making good any damage to any Appurtenances arising from any misuse caused by the Lessee or by the Lessee's Employees; and



- (d) pay to the Lessor the Lessee's proportion (as determined by the Lessor) of the Cost of making good any damage to any Appurtenances from such misuse where the Lessor is unable to determine the person responsible for such damage.

**4.7 Closure of Building in emergency**

The Lessor may close the Building or any part of it in an emergency or where the Lessor considers such action reasonably necessary for the safety of any person or property in the Building and/or on the Land.

**4.8 After hours Service and access to Building**

If the Lessor provides or allows access to any part of the Building or the Premises or provides any Services during any hours outside those hours specified in clause 9.1(c) then all Costs of so doing shall be borne by the Lessee and be paid to the Lessor upon demand. Where the Lessor has agreed to provide such access or Services and the Lessor for any reason whatsoever is unable to provide such access or Services the Lessee shall not be entitled to make, and shall not permit any of the Lessee's Employees to make, any Claim against the Lessor arising from such inability.

**4.9 Securing of Premises**

The Lessee:

- (a) shall ensure that all exterior doors and windows in the Premises are securely locked and fastened at all times when the Premises are not occupied;
- (b) authorises the Lessor or any agent or employee of the Lessor to enter the Premises whenever necessary for the purposes of locking any door or window left unlocked or unfastened or for other similar purposes; and
- (c) shall return all keys and access cards to the Lessor upon the termination or expiration of this Lease failing which the Lessee will be liable for and pay the Costs of altering and/or changing all such locks and access systems.

**4.10 Not to affix antennae**

The Lessee shall not without the consent in writing of the Lessor affix any television or radio mast, antennae, communications equipment or satellite dish to any part of the Building. Any consent so given may be withdrawn at any time without consultation if, the Lessor considers it to be in the interests of the Tenants or the Building to do so.

**4.11 Operation of sound or picture equipment**

Deleted.

**4.12 Not to erect awning**

The Lessee shall not erect or install window coverings, blinds, screens or awnings without the prior written consent of the Lessor which shall not be unreasonably withheld and any window coverings, blinds, screens or awnings hung, erected or installed in or near the Premises shall be of non-inflammable materials and shall comply with all Laws.

**4.13 Not to damage**

The Lessee shall not damage, deface or mark or drive any nails, screws or hooks into any part of the Building. If the Lessee or the Lessee's Employees do damage, deface or mark any part of parts of the Building, the Lessee shall forthwith upon demand pay to the Lessor all Costs in repairing and/or reinstating such part or parts of the Building to their former condition.

**4.14 Not to accumulate rubbish**

The Lessee shall at its Cost keep the Premises clean and tidy by employing competent persons to regularly (at least two (2) times per week) clean the Premises (and immediately adjoining Common Areas) in accordance with this Lease, including the interior and exterior of all glass and windows,



ceilings, ducts, panels, wall, partitions and floor coverings and shall not permit any accumulation of useless property or rubbish on the Building and/or Premises. No rubbish or waste shall at any time be burned or stored upon the Premises or the Building by the Lessee.

**4.15 Not to obstruct windows or openings**

The Lessee shall not in any way cover or obstruct the air-conditioning ducts and outlets or the skylights and windows which reflect or admit air or light into any part of the Building or cover or obstruct any lights or other means of illumination.

**4.16 Not to throw items from windows**

The Lessee shall not throw anything out of the windows or doors of the Premises or the Building or down the lift shafts, passages or skylights or into the light areas of the Building, or deposit waste paper or rubbish anywhere except in proper receptacles, or place anything upon any sill, ledge or other similar part of the Building or the Common Areas.

**4.17 Not to obstruct passageways**

The Lessee shall not obstruct or use for any other purpose those parts of the Common Areas normally used for entrance to or exit from the Premises.

**4.18 Delivery and movement of goods**

The Lessee shall comply with all directions of the Lessor from time to time relating to the receipt, delivery or other movement of any goods or articles of bulk or quantity, and shall use such parts of the Building and the Common Areas and at such times as the Lessor may from time to time permit, and the Lessee will generally comply with all reasonable requirements of the Lessor in regard to such matters.

**4.19 Signs**

- (a) The Lessee shall not write, paint, display or affix any sign, advertisement, name, flagpole, flag or notice on any part of the outside or inside of the Premises and/or the Building except with the prior written consent of the Lessor which shall not be unreasonably withheld and then only of such colour, size and style and in such place or places as shall be first approved by the Lessor.
- (b) The entering of the Lessee's name and description on any directory boards shall be carried out by the Lessor in the style, colour, format and number of lines as approved by the Lessor. All such lettering, signs and other distinctive marks will only be painted or affixed for the Lessee by the Lessor at the Cost of the Lessee.
- (c) At the Termination Date or other determination of this Lease the Lessee shall at its sole Cost remove all lettering, signs and other distinctive marks from the Premises and the Building and shall make good any damage caused by such removal.

**4.20 Contamination and infestation**

If any infectious illness, radiation, contamination, pollution or infestation occurs or is found in the Premises or in the Building as a result of the Lessee or the Lessee's Employees, the Lessee shall forthwith give notice of such event to the Lessor and to all proper Authorities, and where any such infectious illness, radiation, contamination, pollution or infestation affects the Premises the Lessee at its Cost shall thoroughly cause to be removed from, re-mediate, rectify, fumigate, and/or disinfect the Premises (and such parts of the Building affected as a result of the Lessee or the Lessee's Employees) to the satisfaction of the Lessor and of all relevant Authorities.

**4.21 For sale, to let and advertising**

The Lessor shall be entitled at such times and for such periods as the Lessor reasonably considers appropriate to:

- (a) place advertisements and signs on such part(s) of the Premises as it reasonably considers appropriate where the Building or the Premises are for sale, available for lease or for advertising for which the Lessor may receive rental; and
- (b) show persons through the Premises.

The Lessor in exercising its rights under this clause shall endeavour to minimise any inconvenience to the Lessee or the Lessee's Business.

#### 4.22 Installation of meters

- (a) The Lessee will at its cost, if required by the Lessor or by an Authority supplying any Service or utility, permit the installation of meters required to measure the quantity of the service supplied to the Premises.
- (b) The Lessee will not install any electrical equipment which will overload the cables, switchboards and other equipment that supplies electricity to the Building or to the Premises.

#### 4.23 Name of building and logo

The Lessor reserves the right to name the Building, to design a logo for the Building, to alter either of them, and to confer naming rights over the Building in favour of any lessee of the Building.

#### 4.24 Passage of Services

The Lessor reserves the right to maintain and/or pass Services or other matters to pass through, over or under the Premises, to any other premises or parts in the Building and to the Common Areas or elsewhere, by having those Services pass through over or under the Premises, and to have access to those Services for the purpose of maintenance, repair or replacement, or to provide additional Services.

#### 4.25 Work in Building

- (a) The Lessor may carry out any building work in the Building, the Premises, to the Services or the Common Areas.
- (b) The Lessor is entitled to:
  - (i) repair, renovate or refurbish the Building, the Services and Common Areas of the Building;
  - (ii) alter the Common Areas or the Building, including their size, nature and arrangement;
  - (iii) extend or alter the Building or the Services;
  - (iv) add to and alter the car parking facilities, alter their location and the direction and access to those facilities; and
  - (v) alter the access to the Building or to the Premises, including for pedestrians or for vehicles.

#### 4.26 Lessee's obligation not to contaminate land

The Lessee must:

- (a) not use or permit to be used or stored at the Premises any radioactive, toxic or hazardous chemicals, wastes or substances, except in concentrations and quantities permitted by any Authority and in accordance with any Requirements, licences, permits or authorisations required by any Law and in accordance with the conditions imposed by any Authority or under their permission;

- (b) comply with the demands, notices and Requirements and any Authority in respect of contamination of the Premises caused by the Lessee or by occupiers of the Premises, including notices to re-mediate the Premises;
- (c) notify the Lessor within seven (7) days after receiving any demand or notice from any Authority in respect of contamination of the Premises; and
- (d) indemnify the Lessor against any liability, loss, damage, expense or claim which the Lessor may incur as a consequence of the breach by the Lessee of any obligation under this clause, including fines, legal costs, consultants' fees and re-mediation costs.

#### 4.27 Acceptance of Premises

The Lessee accepts that the Premises, Common Areas, Services and Appurtenances in their present state and condition of repair and shall not call upon the Lessee to conduct any repairs or alterations to the Premises, including any structural components of the Building.

#### 4.28 Roller Shutters

The lessee shall at its own cost and expense be responsible for the servicing, maintenance, up keeping and replacement if required of the roller shutters installed at the front and/ or the back of the premises. The lessee accepts that roller shutters as they are and there is no warranty by the Lessor that such Roller shutters are functioning or serviceable at the time the lessee takes possession of the premises.

### 5. MAINTENANCE REPAIRS ALTERATIONS AND ADDITIONS

#### 5.1 General repairing obligation

The Lessee shall during the Term and any holding over, subject to fair wear and tear, keep the Premises, the Lessee's Property and all the Lessor's Property in the Premises in good repair and condition having regard to the condition of the Premises at the commencement of this Lease.

#### 5.2 Structural repair

Nothing in clause 5.1 shall impose any obligation upon the Lessee in respect of any structural maintenance, replacement or repair except as required under this Lease or where rendered necessary by any act, omission, neglect, default or misconduct of the Lessee or the Lessee's Employees or by its or their use or occupancy of the Premises or by the Lessee's Property.

#### 5.3 Particular repairing obligations

The Lessee shall, or the Lessor may at the Lessee's Cost:

- (a) (but without prejudice to any other right or remedy of the Lessor) immediately make good any damage to the Premises or any other part of the Building caused by the Lessee or any of the Lessee's Employees;
- (b) immediately replace all glass in or of the Premises broken, cracked or damaged;
- (c) replace all damaged or non-operative electric light bulbs, globes, tubes and other means of illumination within the Premises;
- (d) repair or where appropriate replace any of the Lessor's Property which are broken or damaged by the Lessee or by any of the Lessee's Employees. Unless the Lessor notifies the Lessee in writing to the contrary the Lessee agrees that such repairs or replacements shall only be carried out by the Lessor but at the Lessee's Cost; and
- (e) keep such of the Lessor's Property or Services located within and exclusively serving the Premises maintained, serviced and in good condition and repair, by professional and competent persons, fair wear and tear excepted.



#### 5.4 Lessor's right of inspection

The Lessor may at all reasonable times upon giving to the Lessee reasonable notice (except in the case of emergency when no notice shall be required) enter the Premises and view the state of repair and condition provided that the Lessor shall cause as little interference or annoyance as possible to the Lessee's use and occupation of the Premises.

#### 5.5 Enforcement of repairing obligations

The Lessor may:

- (a) serve upon the Lessee a notice of any failure by the Lessee to carry out any repair, replacement, cleaning or redecoration of the Premises which is the Lessee's obligation under this Lease; and/or
- (b) require the Lessee to carry out such repair, replacement, cleaning or redecoration within a reasonable time, and in default of the Lessee doing so the Lessor may elect to carry out such repair, replacement, cleaning or redecoration and any Costs whether incidental or otherwise shall be payable on demand by the Lessee to the Lessor.

#### 5.6 Lessor may enter to carry out works

If:

- (a) the Lessor wishes to carry out any repairs to the Premises considered necessary or desirable by the Lessor or in relation to anything which the Lessor is obliged to do under this Lease;
- (b) any Authority requires any repair or work to be undertaken on the Premises or the Building which the Lessor in its discretion elects to do and for which the Lessee is not liable under this Lease;
- (c) the Lessor elects to carry out any repair work which the Lessee is required or liable to do under this Lease by any Law or by any Requirement but fails to do so; and/or
- (d) the Lessor desires to renovate or refurbish any Building or any part of a Building,

then the Lessor, its architects, workmen and others authorised by the Lessor may at all reasonable times upon giving to the Lessee reasonable notice (except in the case of emergency when no notice shall be required) enter and carry out any such works and repairs. In so doing the Lessor shall endeavour not to cause undue inconvenience to the Lessee and the conduct of the Lessee's Business.

#### 5.7 Alterations to Premises

The Lessee shall not carry out or permit to be carried out any Proposed Work (including partitions and floor coverings) without the Lessor's prior written approval which shall not be unreasonably withheld and:

- (a) in seeking the Lessor's approval to any Proposed Work the Lessee shall submit plans and specifications of the Proposed Work together with a list of the persons (if any) from whom the Lessee proposes to call tenders for the Proposed Work;
- (b) the Lessor will (unless it notifies in writing otherwise) require as a condition of its approval the following and the Lessee must at the Lessee's Cost do all of the following:
  - (i) any Proposed Work shall be supervised by a person approved by the Lessor, which consent will not be unreasonably withheld;
  - (ii) any Proposed Work shall be executed by contractors or tradesmen approved by the Lessor, but no objection shall be made by the Lessor to any person whose name appears on the list provided pursuant to clause 5.7(a) and who has been approved by the Lessor;



- (iii) the Lessee pays on demand all Costs incurred by the Lessor in considering the Proposed Work and its supervision, including the fees of architects or other building consultants engaged by or on behalf of the Lessor;
- (iv) the Lessee shall obtain and keep current all necessary approvals or permits from all Authorities necessary to enable any Proposed Work to be lawfully effected, and shall on request by the Lessor produce for inspection by the Lessor copies of all such approvals and permits;
- (v) the Lessee shall forthwith repay on demand by the Lessor any Costs incurred by the Lessor as a result of any alteration, addition or installation to or in the Premises, including any resulting modification or variation to the Building;
- (vi) the Lessee, before any Proposed Work starts, shall submit to the Lessor for its approval at least one (1) copy of all plans and specifications for the Proposed Work approved by all relevant Authorities;
- (vii) any Costs incurred by the Lessor in respect of or incidental to:
  - (A) any Proposed Work;
  - (B) any alterations to Services and all additional lights, power outlets and switches, telephone outlets and alterations or additions to the air conditioning or sprinkler services, or any other equipment which may be required by any Authority or as a result of any Laws or Requirements or by reason of the position of any such internal partitions or the particular requirements of the Lessee, together with all architects' and other consultants' Costs incurred in connection with them,

shall be paid by the Lessee to the Lessor on demand; and
- (viii) such Proposed Work shall be and remain the property of the Lessee who shall be responsible for all maintenance and insurance of it, and unless agreed in writing between the parties such Proposed Work (or the relevant portion of them) shall be removed by the Lessee from the Premises in accordance with clause 11.

#### 5.8 Alterations or additions to Lessor's Property and Services

Subject to clause 5.7 the Lessee shall not without the prior written approval of the Lessor install, interfere with or make any connections to the Lessor's Property, Services and/or Appurtenances, including existing water, gas or electrical fixtures, equipment or appliances or any apparatus for illumination, air-conditioning, heating, cooling, telecommunications or ventilating the Premises.

#### 5.9 Notice to Lessor of damage or accident

The Lessee shall give notice to the Lessor of any:

- (a) damage, accident to or defects in the Premises or in the Building; and
- (b) circumstances likely to cause any damage or injury occurring within the Premises or the Building of which the Lessee has notice (actual or constructive).

#### 5.10 Lessee to Redecorate

On the dates specified in Item 14 the Lessee will at its Cost re-decorate, paint, re-paper, clean or otherwise appropriately treat, paint or wash down, as the case may be, in a proper and workmanlike manner such part or parts of the Premises both interior and exterior usually so treated and replace floor coverings, curtains, blinds and other furnishings, decorations and the Lessee's Property which are in the Lessor's opinion acting reasonably, worn or damaged. All work to the Building or Premises referred to in this clause 5.10 must be first approved in writing by the Lessor prior to any such work commencing.

#### 5.11 Other obligations

The provisions of this Lease or the entering into of this Lease do not affect or release any obligations of the Lessee under any earlier lease, occupation or tenancy of or in relation to the Premises or part of them.

## 6. ASSIGNMENT AND SUB-LETTING

### 6.1 No disposal of Lessee's interest

- (a) During the continuance of this Lease, in respect of whole or part of this Lease or the Premises, the Lessee shall not:
- (i) assign, transfer, sublet, deal with, hold on trust, or grant any interest in, this Lease;
  - (ii) mortgage, charge or encumber this Lease;
  - (iii) part with possession of whole or any part of the Premises;
  - (iv) grant any licence, or share the right of occupation or possession, in respect of whole or part of the Premises;
  - (v) grant any franchise or concession over the Lessee's business conducted at the Premises which would entitle any other person to use, occupy or trade from whole or part of the Premises.
- (b) The Lessee may apply to the Lessor for consent to the assignment or sub-lease of this Lease, which shall not be unreasonably withheld if the following conditions precedent are satisfied:
- (i) the Lessee shall make a written application to the Lessor for consent and furnish complete copies of all written documents entered into between the Lessee and the proposed person relating to the Lessee's business and the Premises, written proposed personal and business references, financial statements and a statement of assets and liabilities certified by a public accountant relating to the assignee and any proposed new guarantors;
  - (ii) the Lessee shall establish to the reasonable satisfaction of the Lessor that:
    - (A) the proposed person is respectable, responsible and solvent;
    - (B) the proposed person and its principals have adequately performed its obligations as the lessee or former lessee of other business premises;
    - (C) in respect of the business or profession intended to be conducted by the proposed person at the Premises the proposed person has sufficient financial resources and business experience to be capable of adequately complying with the Lessee's obligations under this Lease and of efficiently conducting the proposed person's business at the Premises;
  - (iii) the Lessee shall have paid to the Lessor all monies due under this Lease up to the date of the change (and, in respect of any liability which cannot be accurately determined, will secure it to the Lessor's reasonable satisfaction at the date of the change);
  - (iv) there are no un-remedied breaches of the Lessee's obligations under this Lease at the date of the change;
  - (v) any other consents which are required to the change, by head lessors, mortgagees or others, are obtained before the change;
  - (vi) when the proposed person is a company, other than a company whose shares are listed on an Australian Stock Exchange, a Bank Guarantee or bond/security deposit for the amount specified in Item 18 and personal guarantees for



performance of lease covenants for the duration of the lease term by the proposed person be provided, in a form reasonably acceptable to the Lessor and prepared on behalf of the Lessor at the Lessee's expense, by two of the proposed person's directors or principal shareholders chosen by the Lessor;

- (vii) the execution by the Lessee and the proposed person of all such documents required by the Lessor at the Lessee's Cost, which shall be duly stamped and which person shall undertake to have registered promptly after completion;
- (viii) in the event of an assignment the execution of a deed in a form reasonably required by and prepared on behalf of the Lessor, by the Lessor, Lessee, assignee, continuing guarantors and new guarantors, in which:
  - (A) the Lessee confirms its liability under this Lease for the balance of the current lease term;
  - (B) the Lessor is released from liability to the Lessee under this Lease;
  - (C) the assignee covenants to observe the Lessee's obligations under this Lease during the duration of this Lease;
  - (D) the continuing guarantors confirm their consent and continuing liability under this Lease for the balance of the current lease term;
  - (E) new guarantors execute guarantees under this Lease for the assignee;
- (ix) in the event of a sub-lease the terms and conditions of the sub-lease shall be reasonably acceptable to the Lessor and shall:
  - (A) require the sub-lessee to comply with the Lessee's obligations under this Lease as far as they govern the conduct of the sub-lessee as occupant of the sub-premises;
  - (B) prohibit the sub-lessee from doing or permitting some act in relation to the sub-premises which is inconsistent with or would constitute a breach of this Lease;
  - (C) contain similar provisions relating to rent review, including review dates, as are contained in this Lease;
  - (D) prohibit further sub-letting of the sub-leased Premises by the sub-lessee;
- (x) the payment by the Lessee to the Lessor of the Lessor's reasonable costs and disbursements in attending to the matters contemplated by this clause.

## 6.2 Corporate Ownership

If the Lessee is a company or other entity, other than a company whose shares are listed on any Australian Stock Exchange, any change in the ownership, control, shareholding or the directors of the Lessee altering the effective control of the Lessee (or the shareholders and or ultimate beneficial owners of the Lessee) shall be deemed a proposed assignment of this Lease, and the Lessee shall not register, record or enter in its books any transfer of any share or shares in the capital of the Lessee, or deal with any beneficial interest in any such shares or shares, or issue any new share or shares, or take or attempt to take any action having the effect of altering the effective control of the Lessee or having the effect that the shareholders of the Lessee at the date of this Lease together beneficially hold or control less than fifty-one per cent (51%) of the voting rights of capital in the Lessee, unless the Lessee complies with the conditions of clause 6.1.

## 6.3 Mortgaging Lessee's interest in Premises

The Lessee shall not mortgage or charge this Lease or the Lessee's interest in the Premises without first obtaining the written consent of the Lessor, which consent will not be unreasonably withheld where the Lessee is a company and wishes to enter into a proper fixed and/or floating charge over its assets in good faith as a means of securing a bank overdraft facility.



#### 6.4 **Leasing and charging Lessee's Property**

The Lessee shall not mortgage, charge, lease or otherwise deal with any Lessee's Property or anything else which requires or may require the Lessor to sign a landlord's waiver or any similar written material without first obtaining the written consent of the Lessor, which consent will not be unreasonably withheld where:

- (a) the Lessee wishes to enter into a proper mortgage, charge or lease in good faith as a means of financing such Lessee's Property; and
- (b) the Lessee uses the standard form of waiver prepared by the Lessor and pays the Lessor's reasonable Costs (including legal Costs where applicable) in relation to it.

### 7. **INSURANCE AND INDEMNITIES**

#### 7.1 **Insurances to be taken out by Lessee**

The Lessee shall:

- (a) effect on or before the Commencement Date and keep current during the Term (including any extension or renewal or holding over) a public risk insurance policy for an amount not less than that in Item 16 (or such other amount as the Lessor may notify in writing to the Lessee from time to time) and bearing an endorsement whereby the indemnities under the policy extended to include are the Claims referred to in clause 7.6 and all other Claims arising out of or in connection with this Lease;
- (b) effect on or before the Commencement Date and keep current during the Term a comprehensive industrial special risks insurance policy and/or such other insurances described in Item 17 for the Building and the Premises for an amount not less than that in Item 17;
- (c) effect on or before the Commencement Date and keep current during the Term such other policies that a prudent lessee would effect including for any damage or loss to the Lessee's Property;
- (d) insure in such amount (not being less than the full insurable value of them) and against such risks as the Lessor may from time to time require all plate glass windows, doors and display show-cases forming part of or within the Premises;
- (e) ensure that all policies of insurance effected or required to be effected by the Lessee pursuant to this clause 7, whether in respect of the property or risk of either the Lessor or the Lessee:
  - (i) are taken out with an insurer or company approved by the Lessor;
  - (ii) are for such amounts and cover such risks and contain such conditions as are acceptable to or required by the Lessor and/or the Lessor's insurer(s);
  - (iii) have no exclusions, endorsements or alterations unless first approved in writing by the Lessor; and
  - (iv) are taken out in the names of the Lessor and the Lessee for their respective rights and interests;
- (f) in respect of any policy of insurance to be effected by the Lessee pursuant to this clause 7, whenever reasonably required by the Lessor produce to the Lessor the policy of insurance, the receipt for the last premium and a certificate of currency; and
- (g) If the Lessee fails to pay an insurance premium when due, the Lessor may make such payment, which shall become due and payable by the Lessee to the Lessor, together with interest, within seven (7) days after service of a notice by the Lessor on the Lessee requiring payment.

## 7.2 Effect of Lessor's Insurances

The Lessee shall:

- (a) not without the prior consent in writing of the Lessor bring, do or permit to be brought, kept or done anything to or upon the Premises or the Building which shall or may:
  - (i) increase the rate of any insurance on the Premises or the Building or on any property in them; or
  - (ii) vitiate or render void or voidable any insurance in respect of the Premises or the Building or any property in them; or
  - (iii) conflict with any Laws or any Requirements or with any requirements of the Lessor's insurer(s) including relating to fires or fire safety or fire prevention or with any insurance policy in respect of the Premises or the Building or any property in them.
- (b) pay to the Lessor on demand all extra premiums and Costs of insurances (including any Rates) on the Premises or the Building and on any property in them (if any are required) on account of the extra or increased risk caused by the Lessee's use or occupation of the Premises. The Lessee's liability under this clause is in addition to any Lessee's contributions payable towards insurance under clause 16.1 and Item 13 of the Rent Schedule.

## 7.3 Inflammable substances

The Lessee shall not:

- (a) other than as is necessary and proper for the Lessee's Business, and then only in such quantities as are reasonably appropriate, store chemicals, inflammable liquids, acetylene gas or alcohol, volatile or explosive oils, compounds or substances upon the Premises and/or the Building; or
- (b) use any of such substances or fluids in the Premises for any purpose other than the Lessee's Business.

## 7.4 Compliance with fire regulations

The Lessee shall:

- (a) comply with any law including but not limited to any insurance, sprinkler or fire alarm regulations in respect of any Proposed Work which may be carried out by or on behalf of the Lessee in the Premises; and
- (b) pay to the Lessor upon demand the Cost of any alteration to any Services, sprinkler or fire prevention equipment and installations (including alarms) which may become necessary by reason of the non-compliance by the Lessee or by the Lessee's Employees with any Requirements and Laws, including those of any insurer of any Proposed Work in the Premises.

## 7.5 Exclusion of Lessor's liability

The Lessee:

- (a) acknowledges that all property which may be in the Premises during the continuance of this Lease shall be at the sole risk of the Lessee, and the Lessor shall not be liable for any Claim that the Lessee or the Lessee's Employees or any person claiming by, through or under the Lessee may incur or make or any Claim which arises from:
  - (i) any fault in the construction or state of repair of the Building or the Premises or any part of them or the Lessor's Property; or
  - (ii) any defect, breakdown or interruption in any Services or any Appurtenance; or

- (iii) the flow, leakage or penetration by or of any water, condensation, air-conditioning, gas, oil or other source of air, energy or fuel, whether from the roof, walls, gutter, downpipes or other parts of the Building or Land.
- (b) agrees that the Lessor shall not be responsible for and releases the Lessor from liability in respect of any:
  - (i) Claim relating to any property of the Lessee or any other person in the Building, Land or any part of them however occurring; and
  - (ii) damage or injury to, or the death of, any person or property in the Building, Land or on any land near the Building.
- (c) If the Lessor:
  - (i) omits to do anything which it is obliged to do by this Lease; or
  - (ii) does anything contrary to its obligations under this Lease which causes directly loss or damage to the Lessee,
 

the Lessor shall not be liable to the Lessee for such loss or damage unless:

    - (A) the Lessee has given the Lessor notice in writing of such act or omission and requested the Lessor, where practical, to rectify its neglect or omission; and
    - (B) the Lessor has, within a reasonable time, failed to take proper steps to rectify such neglect or omission.
  - (iii) Compliance with this clause shall be an essential condition precedent to any action or Claim by the Lessee against the Lessor to recover such loss or damage.

## 7.6 Indemnities

Notwithstanding that:

- (a) any Claims shall have resulted from anything which the Lessee may be authorised or obliged to do under this Lease; and/or
- (b) at any time any waiver or other indulgence has been given to the Lessee in respect of any obligation of the Lessee under this clause 7.6,

the Lessee shall indemnify and keep indemnified the Lessor from and against all Claims for which the Lessor shall or may be or become liable, whether during or after the Term, in respect of or arising from:

- (i) any Claim from any cause whatever to the Premises, to any property or to any person inside or outside the Premises occasioned or contributed to by any neglect or default of the Lessee or the Lessee's Employees under this Lease;
- (ii) the negligent or careless use or neglect of the Services and facilities of the Premises or the Building or the Appurtenances by the Lessee or the Lessee's Employees or any other person claiming through or under the Lessee or of any trespasser while such trespasser is in the Premises;
- (iii) overflow or leakage of water or from any Services or from any of the Appurtenances or the Lessor's Property, whether originating inside or outside the Premises or Building or caused or contributed to by any act or omission on the part of the Lessee or the Lessee's Employees or other person claiming through or under the Lessee;
- (iv) failure of the Lessee to give notice to the Lessor of any defect in any part of the Building or any other Services in, to or near the Premises;

- (v) any Claim, or accidental death from any cause whatever, to property or persons caused or contributed to by the use of the Premises by the Lessee or by the Lessee's Employees; and
- (vi) all Claims relating to plate and other glass caused or contributed to by any act or omission on the part of the Lessee or the Lessee's Employees.

## **8. DAMAGE, DESTRUCTION AND RESUMPTION**

### **8.1 Cessation of liability to pay rent**

If the Building or Premises or both are damaged so that the Premises cannot be used or are inaccessible the Lessee is not liable to pay Rent, Outgoings or other charges payable to the Lessor for the period that the Premises cannot be used or are inaccessible.

### **8.2 Abatement**

If the Premises and or Building are still useable but the useability is diminished because of the damage, the Lessee's liability to pay Rent and amounts payable for Outgoings is reduced in proportion to the reduction in useability and or access.

### **8.3 Termination**

If the Lessor gives the Lessee a notice that the Lessor considers that the damage is such that repairing it is impracticable or undesirable, then either the Lessor or the Lessee may terminate this Lease by giving not less than seven (7) days' notice to the other and no compensation is payable for that termination.

### **8.4 Repairs**

If the Lessor does not repair the damage or make satisfactory arrangements to do so within a reasonable period, not exceeding three (3) months after the Lessee gives the Lessor a notice asking it to do so, the Lessee may terminate this Lease by giving seven (7) days' notice to the Lessor following the expiration of that three (3) month period.

### **8.5 Lessor's rights**

This clause 8 does not affect any rights the Lessor may have against the Lessee if:

- (a) the damage is caused or contributed to, by; or
- (b) rights under an insurance policy in connection with the Building or Premises or both are prejudiced or a policy is cancelled or payment of a premium or a claim is refused by the insurer because of,

the act, negligence or default of the Lessee or of the Lessee's Employees or any other rights the Lessor may have in connection with the events specified in this clause 8.5.

### **8.6 No obligation to repair, restore or reinstate**

Nothing in this Lease shall oblige the Lessor to repair, restore or reinstate the Building or the Premises or the means of access to them as a result of damage or destruction contemplated by this clause.

### **8.7 Resumption**

If the Premises or any part of the Building and/or the Land containing the Premises is taken for any public purpose the Lessor may terminate this Lease without compensation by giving one (1) month's written notice to the Lessee and on the expiration of that Notice this Lease shall be at an end.



## 9. LESSOR'S COVENANTS

### 9.1 Covenants

Subject to the rights, powers, remedies and reservations of or to the Lessor, the Lessor:

- (a) covenants that, if the Lessee pays the Rent and observes and performs in a the covenants and conditions on its part contained in this Lease, the Lessee may occupy and enjoy the Premises;
- (b) covenants that the Lessee and as appropriate the Lessee's Employees, together with any other persons authorised by the Lessor, may use such of the Common Areas (if any) as are designated from time to time by the Lessor for use as Common Areas which were so designed or intended to be used, subject to the limitations and restrictions contained in this Lease or the Rules, from time to time;
- (c) shall use reasonable endeavours to ensure the Services are operational and functional during the normal business hours, but should any of the Services be inoperative or fail to function, or should the Lessor, by reason of the need to repair or maintain or replace such Services or by reason of the operation of any Laws or Requirements, be compelled to shut off or remove any such Services, or should the Lessor exercise its rights pursuant to clause 4.7 to close the Building, the Lessee shall not be entitled to terminate this Lease by that reason alone nor shall the Lessee or any of the Lessee's Employees have any Claim against the Lessor in that respect;
- (d) shall, subject to the provisions of clause 9.1(c), maintain in good order and repair and in a clean and tidy condition all Common Areas (other than any part of it for which a Tenant or the Lessee is liable); and
- (e) shall use all reasonable endeavours to maintain the Building (other than any part of it for which a Tenant or the Lessee is liable) in good repair and condition.

## 10. DEFAULT AND TERMINATION

### 10.1 Default

If:

- (a) the Lessee fails or refuses to carry out any repairs properly required by any notice within the time specified in the notice; or
- (b) the Lessee fails to duly and punctually perform or observe any of the covenants or conditions contained in this Lease which ought to be performed or observed by the Lessee; or
- (c) any assignment is made of the property of the Lessee for the benefit of creditors; or
- (d) the Lessee, being a company, has a summons or application for its winding up filed which is not dismissed within 21 days, has a statutory demand under the Corporations Act 2001 (Cth) issued against it which is not dismissed within 21 days, enters into liquidation (whether voluntary, compulsory or provisional), or is wound-up or dissolved, or enters into a scheme of arrangement for creditors, or is placed under official management, voluntary administration, administration or a receiver and/or manager of any of its assets is appointed or is otherwise subject to any external administration under the Corporations Act 2001 (Cth); or
- (e) the Lessee, not being a company, commits an act of bankruptcy or has a sequestration order made against him or her, becomes bankrupt or assigns his or her estate or enters into a deed or arrangement or composition for the benefit of creditors;
- (f) the Lessee does not comply with an essential term of this Lease; or
- (g) any default occurs by the Lessee under this Lease,



then and in any of such cases the Lessee shall be deemed to be in default. The Lessor may elect to treat any such default as a repudiation of this Lease by the Lessee.

#### 10.2 Consequences of Default

If the Lessee is in default as specified in clause 10.1 the Lessor may, without prejudice to any other Claim which the Lessor has or may have or could otherwise have against the Lessee or any other person in respect of such default, at any time:

- (a) subject to any prior demand or notice as may be required by Law, re-enter into and take possession of the Premises or any part of them (by force if necessary) and eject (by force if necessary) the Lessee and all other persons from the Premises, and thereupon this Lease shall be absolutely determined;
- (b) by notice to the Lessee terminate this Lease, and from the date of giving such notice this Lease shall be absolutely determined; and/or
- (c) by notice to the Lessee elect to convert the unexpired portion of the Term into a tenancy from month to month, in which event this Lease shall be determined as from the giving of notice of no less than one (1) month expiring on any date, and until the monthly tenancy is determined the Lessee shall hold the Premises from the Lessor as tenant from month to month pursuant to clause 3.2.

#### 10.3 Lessor may rectify

The Lessor may, but shall not be obliged to, remedy at any time without notice any default by the Lessee under this Lease and shall be entitled to enter the Premises for the purposes of doing so, and whenever the Lessor so elects all reasonable Costs incurred by the Lessor (including legal costs and expenses) in remedying a default shall constitute a liquidated debt and shall be paid by the Lessee to the Lessor on demand.

#### 10.4 Waiver

- (a) The Lessor's failure to take advantage of any default or breach of covenant, essential or otherwise on the part of the Lessee shall not be or be construed as a waiver and or estoppel of it, nor shall any custom or practice which may grow up between any of the parties in the course of administering this Lease be construed to waive or to lessen the right of the Lessor to insist upon the timely performance or observance by the Lessee of any covenant or condition of this Lease or to exercise any rights given to the Lessor in respect of any such default.
- (b) A waiver by the Lessor of a particular breach or default shall not be deemed to be a waiver of the same or any other subsequent breach or default.
- (c) The demand by the Lessor for, or subsequent acceptance by or on behalf of the Lessor of, any other monies payable under this Lease shall not constitute a waiver of any earlier breach by the Lessee of any covenant or condition of this Lease, other than the failure of the Lessee to make the particular payment or payments of Rent or other monies so accepted, regardless of the Lessor's knowledge of any earlier breach at the time of acceptance of such Rent or other monies.

#### 10.5 Tender after determination

All monies tendered by the Lessee after the determination of this Lease in the manner described in clause 10.2(a) or in clause 10.2(b) and accepted by the Lessor may be and (in the absence of any express election of the Lessor) shall be applied:

- (a) first, on account of any Rent and other monies accrued and due pursuant to this Lease but unpaid at the Termination Date or date of determination of this Lease (as appropriate); and
- (b) secondly, on account of the Lessor's Costs of re-entry.

#### 10.6 Interest on overdue monies

- (a) The Lessee will pay to the Lessor interest at the Default Rate on any Rent or other monies due by the Lessee to the Lessor on any account whatever (including all monies or Costs which are expressed to be payable or reimbursed to the Lessor upon demand) but unpaid for fourteen (14) days pursuant to this Lease.
- (b) Rent or monies falling due for payment but unpaid as a result of consecutive breaches of the same covenant shall bear interest at the rate applicable to the Rent or other monies (as appropriate) which were due and unpaid on the breach of the covenant which first occurred.
- (c) Such interest shall:
  - (i) accrue from day to day;
  - (ii) be capitalised on the last day of each month;
  - (iii) be payable on the first day of each month where an amount arose in the preceding month or months;
  - (iv) be computed from the due date for payment of the Rent or other monies (as appropriate) until payment of such Rent or other monies in full; and
  - (v) be recoverable in the same manner as Rent in arrears.

#### 10.7 Damages for breach

The Lessee agrees that:

- (a) if the Lessee's conduct (whether by act or omission) constitutes a repudiation of this Lease (or of the Lessee's obligations under this Lease), or constitutes a breach of any Lease covenants, or the Lessor elects to treat any default as a repudiation pursuant to clause 10.1, the Lessee shall compensate the Lessor for all Costs suffered by reason of or arising from any such repudiation or breach;
- (b) the Lessor shall be entitled to recover Costs against the Lessee in respect of repudiation or breach of covenant for the damage suffered by the Lessor for the Term;
- (c) the Lessor's entitlement to recover damages from the Lessee or any other person shall not be limited for any reason or affected by any of the following:
  - (i) if the Lessee abandons or vacates the Premises;
  - (ii) if the Lessor elects to re-enter the Premises or terminate this Lease;
  - (iii) if the Lessor accepts the Lessee's repudiation; or
  - (iv) if the parties' conduct (or that of any of their servants or agents) constitutes or may constitute a surrender by operation of law.

#### 10.8 Lessor may institute proceedings at any time

The Lessor shall be entitled at any time in the Lessor's absolute discretion to institute legal proceedings claiming damages against the Lessee and or the Guarantor in respect of the Term, including the period before and after the repudiation, abandonment, termination, acceptance of repudiation or surrender by operation of law referred to in clause 10.7, whether the proceedings are instituted either before or after such conduct.

#### 10.9 Lessor to mitigate damages

If the Lessee vacates the Premises, whether with or without the Lessor's consent, the Lessor shall use its reasonable endeavours in the circumstances to mitigate its loss and to endeavour to re-lease the Premises at a reasonable rent and on reasonable terms. The Lessor's conduct taken



in pursuance of this duty to mitigate damages shall not of itself constitute acceptance of the Lessee's breach or repudiation or a surrender by operation of law.

#### 10.10 Calculation of damages

Should the Lessor terminate this Lease or the Lease is determined, following any breach of a fundamental term or otherwise then, without prejudice to any other right or remedy of the Lessor, the Lessor shall be entitled to recover from the Lessee the difference between the aggregate of Rent and other monies payable by the Lessee under this Lease for the unexpired residue of the Term less any amount the Lessor is able to obtain, or could in the Lessor's opinion reasonably be expected to obtain, by observing clause 10.9.

### 11. DETERMINATION OF TERM

#### 11.1 Lessee to yield up

The Lessee shall at the expiration or sooner determination of the Term yield up the Premises in the condition provided for by clause 5.1 and this clause 11.

#### 11.2 Removal of Lessee's Property

The Lessee shall, at or before the Termination Date or sooner determination of this Lease, remove from the Premises all the Lessee's Property and reinstate the Premises to such condition prior to the erection, placement or introduction of the Lessee's Property and in accordance with clause 11.3.

#### 11.3 Lessee not to cause damage

The Lessee shall not cause or contribute to any damage to the Premises or to the Building in the removal of the Lessee's Property. Should the Lessee cause any damage to the Premises or to the Building in the removal of the Lessee's Property the Lessee shall make good any such damage and in any event shall leave the Premises in a clean state and condition. If the Lessee fails to do so the Lessor may make good and/or clean the Premises at the Cost of and as agent for the Lessee and recover from the Lessee the Cost to the Lessor of doing so as a liquidated debt payable on demand.

#### 11.4 Failure by Lessee to remove Lessee's Property

If the Lessee fails to remove the Lessee's Property as required by clause 11.2, or in the event of re-entry pursuant to clause 10.2, the Lessor may at its option:

- (a) cause any such Lessee's Property (or part of it) to be removed and stored in such manner as the Lessor in its absolute discretion deems fit at the risk and at the Cost of the Lessee; or
- (b) treat the Lessee's Property (or part of it) as if the Lessee had abandoned its interest in them and they had become the property of the Lessor, and deal with them in such manner as the Lessor thinks fit without being liable in any way to account to the Lessee for them and the Lessee hereby releases the Lessor for any conduct of the Lessor under or in relation to this clause 11.

#### 11.5 Lessee to indemnify and pay Lessor's Costs

The Lessee shall:

- (a) indemnify and keep indemnified the Lessor in respect of the removal and storage of the Lessee's Property and also in respect of all Claims which the Lessor may suffer or incur at the suit of any person (other than the Lessee) claiming an interest in the Lessee's Property by reason of the Lessor acting in any manner permitted in clause 11.4; and
- (b) pay to the Lessor as a liquidated debt payable on demand any Costs incurred by the Lessee in exercising its rights pursuant to clause 11.4, including any excess of Costs over

monies received in disposal of the Lessee's Property pursuant to the Lessor's rights contained in clause 11.4(b).

**11.6 No prejudice to rights of Lessor**

The termination or determination of this Lease shall not prejudice or affect any rights or remedies of the Lessor against the Lessee in respect of any earlier breach by the Lessee of any covenants and conditions on the part of the Lessee.

**12. MISCELLANEOUS**

**12.1 Notices**

- (a) Any notice served or given by the Lessor pursuant to this Lease shall be valid and effectual if signed by any Officer or solicitors for the time being of the Lessor or any other person nominated from time to time by the Lessor.
- (b) Any notice required to be served or which the Lessor may elect to serve on the Lessee shall be sufficiently served if:
  - (i) served personally or if left addressed to the Lessee on the Premises;
  - (ii) sent by facsimile to the facsimile machine of the Lessee or the Lessee's solicitors; or
  - (iii) forwarded by prepaid post to the last known place of business or abode of the Lessee or the Lessee's registered office if the Lessee is a corporation.
- (c) Any notice required to be served on the Lessor shall be sufficiently served if:
  - (i) served personally;
  - (ii) sent by facsimile to the facsimile machine of the Lessor or the Lessor's solicitors appearing in any recent correspondence; or
  - (iii) forwarded by prepaid security post addressed to the Lessor.
  - (iv) all such notices must be addressed to the Lessor at the address specified in this Lease (if any) or at such other address as the Lessor's recent correspondence indicates.
- (d) Any notice sent by:
  - (i) post shall be deemed to be served on the second business day after the day it was posted;
  - (ii) facsimile shall be deemed to have been served at the time and on the day that the whole of the notice has been transmitted from the sending facsimile machine and in the case of a facsimile, the receiving machine does not forthwith indicate any malfunction in the transmission.

**12.2 Costs**

The Lessee shall pay to the Lessor on demand (to the extent permitted by law):

- (a) all stamp duty (including penalties and fines other than penalties and fines due to the default of the Lessee); and
- (b) all the Lessor's legal and other Costs of and incidental to:
  - (i) the negotiation, preparation, completion, stamping and registration of this Lease and any certified copy of it required by the Lessor;



- (ii) any consent required under this Lease including any costs associated with obtaining consent of the Lessor's mortgagee(s) to this Lease;
- (iii) any assignment or subletting;
- (iv) any surrender or termination of this Lease otherwise than by effluxion of time;
- (v) default by the Lessee or the Lessee's Employees in observing or performing any covenants contained or implied in this Lease; and
- (vi) any court or other proceedings commenced by the Lessee arising from any determination of Rent.

### 12.3 Right of Lessor to make Rules

The Lessor shall have the right from time to time to make or introduce Rules and to amend them by notice given to the Lessee so long as no such Rule or amendment prejudices the rights of the Lessee under this Lease, and in the event of any inconsistency between the provisions of this Lease and the Rules as amended the provisions of this Lease shall prevail. The Lessee must observe and ensure that the Lessee's Employees observe all Rules, including as amended or introduced from time to time.

### 12.4 Reservations

The Lessor reserves the following rights to itself and all persons claiming by, through or under the Lessor:

- (a) after reasonable notice (except in the case of an emergency when no notice shall be necessary) the right to gain access, install, maintain, use, repair, alter, service and replace any Services or any part of them or any area including any pipe, duct, wire and plant for the Building;
- (b) the exclusive right to the use of the roof, external walls and surfaces of the Building and the Premises and such of the other parts of the Premises for any purposes whatever (which parts are not subject to this Lease), including the right to erect and display advertising signs on them or to grant leases or licences or otherwise authorise any person to use any such areas for such purposes as the Lessor sees fit.

### 12.5 Easements

The Lessor may subdivide (including strata and otherwise) the Land or Building or both or any part of them, or may dedicate land or transfer, grant or create any easement or other right in favour of, or enter into any arrangement or agreement with, any owners, lessees or occupiers or others having an interest in any land (including the Land) near the Premises or with any Authority as the Lessor thinks fit unless this would have a substantial adverse effect on the Lessee's Business. This Lease shall be deemed to be subject to any such easement, subdivision or other right as envisaged by this clause 12.5. The Lessee will at its cost consent to and execute all documents required by the Lessor in relation to this clause.

### 12.6 Power of attorney

The Lessee from the Commencement Date:

- (a) irrevocably nominates and appoints the Lessor and/or its officers and/or its nominees severally to be the lawful attorney(s) of the Lessee to act, if the Lessor terminates the Lease pursuant to clause 10 (a sufficient proof of which for any purpose shall be a statutory declaration of the Lessor or of any Officer or Nominee of the Lessor), to execute a transfer or a surrender of this Lease or withdrawal of caveat (as appropriate) and to procure the same to be registered, and for this purpose to use the name of the Lessee and generally to do anything relating to the Premises as fully and effectually as the Lessee could do;



- (b) covenants for itself, its successors and assigns to ratify and confirm whatever any of the Attorney(s) or any substitute or any nominee as referred to in Paragraph (a) lawfully does or causes to be done relating to the Premises. The Registrar-General of the Land and Property Information is authorised to act upon the said statutory declaration and to accept it as sufficient evidence of the determination of this Lease and/or authority to withdraw any caveat;
- (c) indemnifies and agrees to keep the Lessor indemnified from and against any Costs incurred by the Lessor as a result of or in connection with the exercise of the rights and powers given to the Lessor in Paragraph (a); and
- (d) agrees to the substitution as the attorney(s) of the Lessor the purchaser (and/or its nominees) of the reversion of this Lease.

**12.7 Rights accruing to others**

The reservations and rights exercisable by the Lessor over the Land, Building and or Premises may be exercised by:

- (a) successors and assigns of the Lessor whilst being the owner of the Land;
- (b) any person in whom control over the Land is vested as head lessee or concurrent lessee;
- (c) mortgagees in possession in respect of the Land and or Premises.

**13. GUARANTEES**

**13.1 Bank Guarantee**

The Lessee shall:

- (a) on or before its execution of this Lease arrange for the issue by a bank or other financial organisation approved by the Lessor of a Bank Guarantee in favour of the Lessor for the amount specified in Item 18;
- (b) at each Review Date or (if later) at the determination of each review of the Rent provide a replacement or additional Bank Guarantee (as appropriate), so that the total amount guaranteed bears to the Rent payable from each Review Date the same proportion as the amount specified in Item 18 bears to the Rent as at the Commencement Date;
- (c) at all times ensure that any Bank Guarantee is kept current and enforceable;
- (d) where the Lessor makes demand on any Bank Guarantee the Lessee shall provide a replacement Bank Guarantee equal to the amount from time to time claimed by the Lessor;
- (e) at its Cost within 14 days of a written request by or on behalf of the Lessor provide a replacement Bank Guarantee to such person(s) as requested by or behalf of the Lessor which may include transferees or assignees of the Lessor's interest in the Land or any mortgagee of the Lessor and the existing Bank Guarantee will be returned to the Lessee.

**13.2 Bond/Security Deposit as alternative**

In the alternative to providing a Bank Guarantee pursuant to clause 13.1 above, the Lessee shall:

- (a) on or before its execution of this Lease pay to the Lessor the amount specified in Item 18;
- (b) at each Review Date or (if later) at the determination of each review of the Rent provide a replacement bond/security deposit or additional bond/security deposit (as appropriate), so that the total amount held by the Lessor on the Lessee's behalf bears to the Rent payable from each Review Date the same proportion as the amount specified in Item 18 bears to the Rent as at the Commencement Date;

- (c) if the bond/security deposit or any part thereof is appropriated by the Lessor as aforesaid, upon demand by the Lessor pay to the Lessor the amount so appropriated so that the bond/security deposit is maintained at the amount set out in Item 18.
- (d) at its Cost within 14 days of a written request by or on behalf of the Lessor provide a replacement bond/security to such person(s) as requested by or behalf of the Lessor which may include transferees or assignees of the Lessor's interest in the Land or any mortgagee of the Lessor and the existing bond/security deposit will be returned to the Lessee.

### 13.3 Personal Guarantee

The Guarantor guarantees to the Lessor:

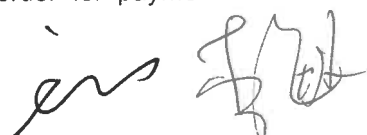
- (a) the due payment by the Lessee of the Rent and other monies covenanted or agreed to be paid; and
- (b) the timely performance and observance of all the covenants and conditions contained or implied in this Lease and to be performed and observed by the Lessee.

### 13.4 Indemnity

The Guarantor indemnifies the Lessor and agrees at all times to keep the Lessor indemnified from and against all Claims which the Lessor may suffer or incur consequent upon or arising directly or indirectly out of any breach or non-observance by the Lessee or the Lessee's Employees of any of the covenants or conditions contained or implied in this Lease or any extension or renewal of it and to be performed or observed by the Lessee.

### 13.5 Other terms of Guarantee and Indemnity

- (a) The rights, remedies and recourse of the Lessor pursuant to clauses 13.3 and 13.4 shall not in any way be prejudiced or affected and shall remain fully enforceable, and the liability of the Guarantor under clauses 13.3 and 13.4 shall not be prejudiced or affected, notwithstanding any one or more or all of the following circumstances:
  - (i) the granting of any time, credit, forbearance, indulgence or concession at any time by the Lessor to the Lessee or to any Guarantor;
  - (ii) any absolute or partial release of the Lessee or any Guarantor or any compromise with the Lessee or any Guarantor;
  - (iii) any variation of the provisions of this Lease or any extension or renewal of it and any extension or renewal or holding over of the Term or other continued occupation of the Premises by the Lessee;
  - (iv) any composition, compromise, release, discharge, arrangement, abandonment, waiver, variation, relinquishment or renewal of any security or right by the Lessor or of any liability or obligation of the Lessee and or any Guarantor, under any Law or otherwise;
  - (v) any assignment of this Lease or sub-lease of the Premises or any part of them;
  - (vi) any termination or determination of this Lease whether by effluxion of time, re-entry, forfeiture, surrender or otherwise;
  - (vii) the fact that the Rent or any other monies or any part of them may not be recoverable or may cease to be recoverable or may never have been recoverable, or that any transaction affecting in any way the Rent or the obligations contained or secured by this Lease is void, voidable or unenforceable in whole or in part whether initially or otherwise;
  - (viii) any failure or agreement not to sue, exchange or modification made or any other dealing, act or omission (whether constituting a waiver, election, estoppel or otherwise) by the Lessor with respect to any judgment, order for payment of

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monies, specialty instrument, negotiable or otherwise, or other security whatever recovered, held or enforceable by the Lessor or with respect to any obligation or liability whatever in respect of all or any of the Rent and other monies payable under this Lease or the obligations contained in this Lease;

- (ix) the death, disability, bankruptcy, infancy, deed of arrangement, assignment or composition for the benefit of creditors, winding-up, voluntary administration, administration, scheme of arrangement, reduction of capital, capital reconstruction or the appointment of receiver and/or manager (whether by the court or under the powers contained in any instrument), official management or external administration under the Corporations Act 2001 (Cth), of the Lessee or any Guarantor or notice of any of these circumstances;
  - (x) the fact that one or more of the persons named in this Lease as a Guarantor or Lessee may never execute this Lease as Guarantor or Lessee, as the case may be, or that the execution of this Lease by the Lessee or any one or more of the Guarantor is or may become unenforceable, void or voidable;
  - (xi) any exercise or purported exercise by the Lessor of its right of re-entry;
  - (xii) this Lease (or any new lease pursuant to it) is not registered at the Land and Property Information (whether or not it must be registered);
  - (xiii) any obligation of the Lessee is an equitable obligation or if this Lease is extended and or varied under any Law; or
  - (xiv) any disclaimer of this Lease as a result of any insolvency, corporate or personal, of the Lessee.
- (b) This guarantee and indemnity shall be irrevocable and continuing and shall extend to cover all obligations of the Lessee to the Lessor however arising, and they shall continue and remain in full force and effect until the due performance and observance by the Lessee of all the covenants and conditions to be performed and observed by the Lessee in accordance with the terms of this Lease.
- (c) Neither the Guarantor's liability nor the Lessor's rights under this guarantee and indemnity or otherwise shall be prejudiced or discharged by any act or omission or any event or securities of any description which might otherwise have the effect (whether at law in equity or under any Law) of prejudicing or discharging the liability of the Guarantor, either as a guarantor or principal debtor or as an indemnifier.
- (d) The Guarantor further agrees that any payment made to the Lessor and later avoided or the benefit of which is denied to the Lessor at any time by provisions of any Law shall be deemed not to have discharged the Guarantor's liability, and in any such event the Lessor the Lessee and the Guarantor shall be restored to the rights which each respectively would have had if the payment had not been made.
- (e) The Guarantor agrees to indemnify and keep indemnified the Lessor against all Claims, direct or indirect, sustained or incurred by the Lessor consequent upon any disclaimer of this Lease by a liquidator, receiver and/or manager of the Lessee for the residue of the Term which would have remained if there had been no disclaimer.
- (f) The Guarantor shall not prove or claim in any such liquidation, composition, arrangement or assignment or in respect of such appointment until the Lessor has received one hundred cents in the dollar in respect of the monies due, owing or payable by the Lessee to the Lessor, and the Guarantor shall hold in trust for the Lessor such proof and claim and any dividend received by it.

#### 13.6 Guarantee to enure

If this Lease is transferred or assigned to any person the benefit of this guarantee and indemnity shall extend to the transferee or assignee and the benefit of this guarantee and indemnity shall also continue to enure concurrently for the benefit of the Lessor notwithstanding any such transfer or assignment.



## **14. MEASUREMENT TO LETTABLE AREA**

### **14.1 Property Council Method**

The lettable area of the whole or part of the Premises and or the Building shall be determined in accordance with the Property Council Method of Measurement (March 1997) published by the Property Council in respect of buildings such as the Building.

### **14.2 Change in method**

If the Property Council Method of Measurement is altered during the continuance of this Lease, then subsequent calculations of the Lettable Area shall be undertaken on the basis of the altered method of measurement, including for rent review and the calculation of Lessee's Contribution.

### **14.3 Rent calculated by rate per square metre**

If the Lease requires the Lessor will determine the Lettable Area and calculate the Rent by multiplying the rate per square metre and the Lessor is authorised to insert such figures in this Lease.

### **14.4 Disputes**

In the event that the Lessee disputes the determination of the Lettable Area, the Lessee must provide written notice along with a certificate from a surveyor in support of its disputed determination within 14 days of the Lessor's determination under clause 14.3, and upon the expiration of such 14 day period the determination of the Lessor under this clause will be final, conclusive and binding upon the Lessee.

### **14.5 Certificate of surveyor or architect**

In the event of any dispute a certificate by a surveyor or architect (agreed by the parties) indicating that person's calculations in accordance with this clause is prima facie evidence of the determination of Lettable Area of the Premises covered by those calculations.

## **15. ESSENTIAL TERMS**

- 15.1 Each obligation of the Lessee to pay Rent, money and its obligations under clauses 4.1, 4.2, 4.3, 5, 6 and 7 are essential terms of this Lease. Other obligations of this Lease may also be essential obligations.

## **16. OUTGOINGS**

- 16.1 "Outgoings" includes all amounts paid or payable by the Lessor in connection with the Land, the Building and the Premises and unless otherwise stated in Item 13 includes in relation to the Land, the Building and the Premises:

- (a) Council Rates;
- (b) Rates and charges (including for usage) payable to the Sydney Water or any other body or authority responsible for the reticulation of water and/or sewerage and/or drainage;
- (c) Building and public liability insurance.
- (d) Fire Levy
- (e) Any other outgoing which the Lessor would not have been liable to pay but for the use and occupation of the premises by the Lessee.



If the Lessee is paying increases in Outgoings only or if the extent of Outgoings is otherwise limited, it shall be specified in Item 13.

**16.2 Outgoings estimate**

At least one (1) month before the beginning of each Outgoings Year the Lessor must give the Lessee a notice stating the Lessor's estimate of the Outgoings (itemised under the item descriptions used in the list of outgoings in any Disclosure Statement) and the Lessee's Contribution for that Outgoings Year.

**16.3 Outgoings instalments**

The Lessee must pay instalments in advance on each Rent Day on account of the Lessee's Contribution. Each instalment is the Lessor's estimate of the Lessee's Contribution for the Outgoings Year divided by the number of Rent Days in that Outgoings Year.

**16.4 Expenditure statement**

By 30 September each year, the Lessor must provide the Lessee with a report of the Lessor's outgoings for the previous financial year ending 30 June.

**16.5 Reconciliation**

If the estimated outgoings received by the Lessor is more or less than the proportionate amount for which the Lessee, the credit or debit must be paid or allowed on the next due date for the payment of Rent or, if the Lease has ended, within seven days.

**16.8 No percentage**

In the event that no percentage of Outgoings is specified in Item 13 (other than "Nil") the Lessee shall pay a proportion of the Outgoings being the same proportion as the area of the Premises bears to the total lettable area of the Building, which areas will be measured according to the Property Council's most recent method of measurement.

**16.9 Survival of outgoings obligations**

The liability of the Lessee to pay the Lessee's Contribution of Outgoings shall not be determined or otherwise prejudiced by the prior expiry of the Term or other determination of this Lease.

**16.10 Expiry or determination before outgoings assessment**

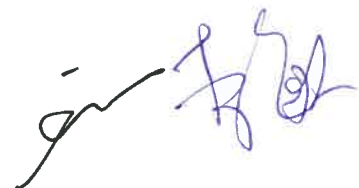
If this Lease expires or if this Lease is otherwise determined before the expiration of any period during which Outgoings are assessed then the Lessee's Contribution of Outgoings pursuant to this clause 16 shall be deemed to accrue daily for the broken period and the amount of the Lessee's contribution be calculated and payable accordingly.

**16.11 Calculation according to Valuer-General's valuation**

In any Outgoings Year where prior to the issue of an assessment for the relevant year in respect of Outgoings, the term of the Lease expires or the term is determined for any reason then the Lessor shall be entitled to calculate the amount of Outgoings on the basis of the Land and Property Information Valuer-General's valuation of the Land and the amount of the Outgoings by the relevant Authority for that year. The amount so calculated shall be deemed to have been assessed, levied or imposed by that Authority.

**16.12 Lessee to pay charges**

Whether or not the Lessee is liable for any Outgoings, the Lessee will be liable for and pay for any electricity, power, fuel, gas, oil and water in relation to any Services and telephone, garbage removal, waste disposal, and other Services or utilities in relation to and not necessarily exclusively for the Premises or the Lessee's Business.



**17. GOODS AND SERVICES TAX**

**17.1 Definitions**

"GST" means any tax, levy, charge or impost implemented under the A New Tax System (Goods and Services Tax) Act 1999 (Cth) ("GST Act"), or an Act of the Parliament of the Commonwealth of Australia substantially in the form of, or which has a similar effect to, the GST Act.

**17.2 Calculation**

The amount of the Rent and any other payments specified in this Lease do not include GST.

**17.3 Liability for GST**

Notwithstanding anything else herein contained, if the Lessor is, or becomes, liable to remit GST to the Australian Taxation Office in respect of a supply for which payment is to be made by the Lessee under this Lease, the amount payable by the Lessee will be increased so that the net amount retained by the Lessor after payment of the GST is the same as if the Lessor was not liable to remit any GST in respect of that supply. As at the date of this lease the Lessor is not liable to remit GST

**17.4 GST rate change**

If the GST rate changes then, from the date of the change this Lease will be deemed amended so that the new rate applies in lieu of any previous rate.

**18. SMOKING**

**18.1 Lessee's indemnities**

The Lessee releases and indemnifies the Lessor, its officers, servants, employees and agents from and against all claims, demands, proceedings, orders, judgments, damages, costs and expenses for loss, damage or injury sustained by the Lessee, the Lessee's Employees or by any agent, employee, invitee or licensee of the Lessee, or by any person whomsoever in respect of any loss, damage, injury or death in connection with the presence at any time of tobacco smoke (including, without limitation, loss, damage, injury or death as a consequence of the passive or involuntary inhalation of tobacco smoke by any person) in or around the Premises or the Building occasioned or contributed to by any act, omission, neglect, negligence or default of the Lessee, the Lessee's Employees or by any agent, employee, invitee or licensee of the Lessee.

**19. CONTAMINATION**

**19.1 Lessee's indemnities**

The Lessee shall remedy any contamination of the Premises caused by the Lessee and hereby indemnifies and shall keep indemnified to the fullest extent permitted by law the Lessor, its employees, invitees and agents from and against all losses, actions, claims, financial penalties, costs, demands, costs of remediation and disposal and liabilities of any kind whatsoever resulting or arising in any way directly or indirectly from any contamination of the Premises caused by the Lessee including without limitation any Costs and expenses incurred in relation to any notice, direction or order issued or made in respect of the Premises pursuant to the any environmental Law in force from time to time and without prejudice to the foregoing shall assume all liability for damage, loss, death or injury to any person or land resulting in any way from or in relation to the use by the Lessee of the Premises including, but without limitation, radiation and the leakage or spillage of petroleum products. In this clause, "contamination" includes radiation and like contaminants. Environmental Law means any act of Parliament which has the purpose of protecting the environment from pollution including, but not limited to, pollution relating to air, water, soil, noise or chemicals.

**20. WORK, EQUIPMENT, FIXTURES AND OTHER ITEMS**



## 20.1 Lessor's rights

Despite any other provision of this Lease, in the event that the Lessee undertakes any works, installs any equipment fixtures or other items in relation to the Premises then the Lessor is entitled to either:

- (a) Exercise its rights in relation to such items (or any of them) as set out in this Lease; and/or
- (b) Elect in writing to the Lessee, immediately prior to, upon or at any time following the expiration of this Lease (or any further term) or upon the Premises being vacated for any reason, that all such items (or any of them) become the absolute property of the Lessor and the Lessor will not be required to pay any compensation to the Lessee for such items that the Lessor elects to retain.

## 21. REDEVELOPMENT

### 21.1 Termination notice

- (a) The Lessor may give the Lessee a termination notice terminating this Lease on a specified termination date if the Lessor wishes to redevelop. The termination date must be at least 12 months after the date the Lessor gives the Lessee the termination notice and can only be issued by the Lessor after the third anniversary from the commencement date stipulated on this Lease. This Lease terminates at 12 noon on the termination date (in which respect time is of the essence for both the day and the hour).
- (b) If an option for renewal has been exercised prior to the date the Lessor gives the termination notice, then:
  - (i) any lease resulting from the exercise of the option for renewal which has commenced within 12 months of the date of the termination notice, terminates at 12 noon on the termination date (in which respect time is of the essence for both the day and the hour);
  - (ii) any lease resulting from the exercise of the option for renewal which has not commenced as at the termination date, will not commence and will be of no effect.

### 21.2 What the Lessee must do on the termination date

On or before 12.00 noon on the termination date (in which respect time is of the essence for both the day and the hour) the Lessee agrees to give the Lessor:

- (a) withdrawals in registrable form of any caveats lodged in respect of the Premises or this Lease (other than a caveat lodged by or on behalf of the Lessor); and
- (b) vacant possession of the Premises; and
- (c) all keys, access cards and security devices for the Premises and the Building held by or on behalf of the Lessee; and
- (d) if this Lease is registered, all documents (but without the Lessor having executed them) and consents necessary to remove the notation of this Lease from the title to the Land.

### 21.3 Release

As and from 12 noon on the termination date the Lessee releases the Lessor from, and agrees that the Lessor is not liable for, liability or loss arising from, or Costs incurred in connection with this Lease, the use or occupation of the Premises or the termination of this Lease under this clause 21, including loss of goodwill.

### 21.4 Release of Lessee



As and from 12 noon on the termination date, the Lessor releases the Lessee from liability and loss arising from, or Costs incurred in connection with this Lease other than:

- (a) liabilities, losses and Costs arising in connection with a breach of this Lease by the Lessee occurring on or before the termination date; and
- (b) the Lessee's obligations under clauses 21.6 ("Adjustments") and 21.7 ("Further steps").

#### 21.5 Lessee's actions

After service of the notice under clause 21.1, the Lessee may not:

- (a) assign any rights in relation to, or sub-let or part with possession of the Premises; or
- (b) do anything which may result in vacant possession of the Premises not being given to the Lessor on the termination date; or
- (c) exercise any option for renewal contained in this Lease.

#### 21.6 Adjustments

The Lessor and the Lessee agree to make all necessary adjustments of amounts payable by the Lessee under this Lease on the termination date. If an amount cannot be adjusted because it is not known, the Lessor and the Lessee agree to make the adjustment within 14 days after the amount is known.

#### 21.7 Further steps

The Lessee agrees, at its own expense, to do anything the Lessor asks (such as obtaining consents, signing and producing documents and getting documents completed and signed):

- (a) to bind the Lessee and any other person intended to be bound under this clause 21;
- (b) to give effect to the intentions of the parties and the objectives of this clause 21 and the transactions contemplated by it including by the execution and delivery of documents and other instruments; and
- (c) to use its best endeavours to cause relevant third parties to do likewise to bind every party intended to be bound under this clause 21.

#### 21.8 Certificate

A certificate signed by the Lessor certifying that it has made a decision to Redevelop under clause 21.1 ("Termination notice") is conclusive evidence that the decision has been made.

#### 21.9 Use of Common Areas

After service of a notice under clause 21.1 ("Termination notice"), the Lessor, and person authorised by the Lessor may use the Common Areas for any purpose in connection with the Redevelopment.

#### 21.10 Exercise of rights

The exercise by the Lessor of its rights under this clause is not a breach of the Lessor's obligation to give quiet enjoyment.

#### 21.11 No reliance

The Lessee agrees that it has not relied on any representation or warranty as to whether or when the Lessor may make a decision to Redevelop under this clause.

#### 21.12 Definitions in this clause 21

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“Redevelop” means, for any reason, adding to, demolishing, rebuilding, renovating or refurbishing (and any other activity of a like nature):

- (a) the Building; or
- (b) the Premises; or
- (c) the Services

and Redevelopment has a corresponding meaning.

## 22. DIRECT DEBIT AUTHORITY

22.1 The Lessee shall do all acts and things, including signing a Direct Debit Authority and such other documents as may be necessary, so that all payments for rent and outgoings, from time to time, may be directly debited from the Lessee’s account by the Lessor.

### RENT SCHEDULE

<b>Item 1</b> (Clause 1.1)	<b>Lessor</b>	Min Li of 7 Constitution Rd. Ryde NSW 2112
<b>Item 2</b> (Clause 1.1)	<b>Lessee</b>	Limin Xu of 8 Van Diemen Avenue Willmont NSW 2770
<b>Item 3</b> (Clause 1.1) (Clause 13)	<b>Guarantor</b>	Not applicable
<b>Item 4</b> (Clause 1.1)	<b>Land</b>	Title Folio Identifier: 11SP85065
<b>Item 5</b> (Clause 1.1)	<b>Premises</b>	Part being Ground Floor Lock up shop known as Shop 2 situated at 572 Military Rd. Mosman NSW 2088
<b>Item 6</b> (Clause 1.1)	<b>State/Territory</b>	New South Wales
<b>Item 7</b> (Clause 1.1) (Clause 3.1)	<b>Term</b>	Five (5) Years
<b>Item 8</b> (Clause 1.1)	<b>Commencement Date</b>	1 June 2015
<b>Item 9</b> (Clause 1.1)	<b>Termination Date</b>	31 May 2020
<b>Item 10</b> (Clause 3.3)	<b>Particulars of Further Term</b>	Five (5) years
<b>Item 11</b> (Clause 2)	<b>Rent</b>	\$52,000.00 per annum by monthly instalments in advance of \$4,333.33 (plus GST thereon in accordance with Clause 17.3 if and when applicable))
<b>Item 12</b> (Clause 2)	<b>Rent-Free Period</b>	Not applicable.
<b>Item 13</b> (Clause 16.1)	<b>Lessee’s Contribution</b>	All applicable Council Rates water Rates and Water usage and Public Risk Insurance
<b>Item 14</b> (Clause 5.10)	<b>Lessee to re-decorate</b>	Not Applicable
<b>Item 15</b> (Clause 1.1) (Clause 4.1)	<b>Lessee’s business</b>	Therapeutic Massage Clinic
<b>Item 16</b> (Clause 7.1)	<b>Public Risk Insurance</b>	Ten million dollars (\$10,000,000.00)


Item 17 (Clause 7.1)	Comprehensive Industrial Special Risk and other Insurance	Not applicable. However, Lessee to pay any additional premium and or insurance required as a result of the nature of the Lessee's Business, any dangerous, hazardous or otherwise special circumstances, materials and/or equipment used and or stored by the Lessee
Item 18 (Clause 13)	Bank Guarantee/Bond	Equal to 2 month's rent being \$8,666.66 (and any applicable GST)
Item 19 (Clause 3.4)	Method and Procedure of Determination of Commencing Rent if Option exercised	As per item 22 (Market Review)
Item 20 (Clause 2.2)	Fixed rent increases	Four percent (4% ) per annum including the term of the Option
Item 21 (Clause 2.3)	CPI Adjustment Dates	Not Applicable
Item 22 (Clause 2.4)	Market Review Dates	31 May 2020


EXECUTED as a deed.

**Lessor 1**

I certify that I am an eligible witness and that the lessor's attorney signed this dealing in my presence.

Certified correct for the purposes of the *Real Property Act 1900 (NSW)* by the Lessor

  
 .....  
 Signature of Witness  
 ALEXANDER FRAME

  
 .....  
 Signature of Lessor


Name of Witness  
 12/127 BURWOOD RD BURWOOD 2134  
 .....  
 Address of Witness


.....  
 .....


**Lessee**

Certified correct for the purposes of the *Real Property Act 1900 (NSW)* and executed on behalf of the corporation named below by the authorised person(s) whose signature(s) appear(s) below pursuant to the authority specified.

Certified correct for the purposes of the *Real Property Act 1900 (NSW)* by the Lessee

  
 .....  
 Signature of Witness  
 SHU ACCT 811  
 .....  
 Name of Witness

  
 .....  
 Signature of Lessee

  
 .....  
 Address of Witness

8 Carbuttlen St  
 MERRYLANDS

