

# MEMORANDUM



New South Wales  
Section 80A Real Property Act 1900

## AE233695G

**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.

(B) **LODGED BY**

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			BM	

(B) **APPLICANT**

Bitova Pty Limited ABN 84 071 155 818
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(C) The applicant requests the Registrar General to record this memorandum, comprising 34 pages including this page, which contains provisions deemed to be incorporated in any instrument which refers to it.

- (D) i For option to renew see clause 4  
 ii For option to purchase see clause NOT APPLICABLE

(E) Signature of applicant's representative:

Name of signatory: Amanda Anne Hempel  
 Capacity of signatory (if applicable): Applicant's solicitor  
 Date: 22 September 2008

FOR THE PROVISIONS CONTAINED IN THIS MEMORANDUM SEE THE ANNEXURE A

# Annexure A to the Memorandum for Sirsi Marina

## 1 Defined terms and interpretation

### 1.1 Definitions in the Dictionary

A term or expression starting with a capital letter:

- (a) which is defined in the Dictionary in Schedule 1 (**Dictionary**), has the meaning given to it in the Dictionary;
- (b) which is defined in the Corporations Act, but is not defined in the Dictionary, has the meaning given to it in the Corporations Act; and
- (c) which is defined in the GST Law, but is not defined in the Dictionary or the Corporations Act, has the meaning given to it in the GST Law.

### 1.2 Interpretation

The interpretation clause in Schedule 1 (**Dictionary**) sets out rules of interpretation for this Lease.

## 2 Lease

### 2.1 Grant of Lease

The Landlord grants to the Tenant and the Tenant takes from the Landlord a lease of the Premises for the Term, on the terms contained in this Lease.

### 2.2 Type of Lease

Item 3 of the Reference Schedule states whether the Rent payable under this Lease is inclusive of Outgoings or exclusive of Outgoings.

### 2.3 Exclusion of implied terms

Sections 84, 84A, 85 and 86 of the *Conveyancing Act 1919* (NSW) do not apply to this Lease and are not implied in this Lease unless expressly included.

## 3 Term

### 3.1 Term

The Lease commences on the Commencement Date and, subject to earlier termination, terminates on the Termination Date.

### 3.2 Holding Over

If the Landlord consents, the Tenant may hold over after the end of the Term as a monthly tenant:

- (a) at a rent nominated by the Landlord giving not less than 2 months' notice, or failing any nomination, at a monthly rent equivalent to 1/12<sup>th</sup> of the Rent payable by the Tenant immediately before the Termination Date;
- (b) terminable by either party giving the other 1 month's notice expiring at any time; and
- (c) otherwise on the same terms and conditions of this Lease, but excluding any condition about an option to renew this Lease.

## 4 Option to renew

### 4.1 Option to renew

The Landlord must grant a Renewed Lease to the Tenant for the Option Term on the terms set out in this clause only if:

- (a) the Tenant gives written notice of exercise of the Option on the Landlord during the Option Notification Period;
- (b) the Tenant is not in breach of its obligations under this Lease at the date it gives notice or at the Termination Date, unless that breach has been waived by the Landlord



- or remedied to the satisfaction of the Landlord; and
- (c) the Tenant delivers to the Landlord, before the Termination Date, a guarantee of the Tenant's obligations under the renewed lease by the same person (or another person acceptable to the Landlord) and on the same terms as any given in connection with the Tenant's obligations under this Lease.

#### 4.2 Terms of New Lease

The Renewed Lease is to be on the same terms as this Lease but with the following changes:

- (a) the Commencement Date and the Termination Date are changed to reflect the commencement date and the termination date of the Option Term;
- (b) the Rent Review Dates in Item 8 of the Reference Schedule are changed to reflect the rent review details specified in Item 6 of the Reference Schedule for the relevant Option Term;
- (c) if there is more than one option, Item 6 of the Reference Schedule is amended by reducing the number of options by the option that has just been exercised;
- (d) if there is only one option, Item 6 and Item 7 of the Reference Schedule and this clause 4 (**Option to renew**) are deleted and replaced with "Not Applicable";
- (e) the Rent is the amount equal to the Rent payable for the Lease Year immediately before the commencement date of the Renewed Lease reviewed in accordance with clause 6 (**Rent review**) using the rent review mechanism stated in Item 6 of the Reference Schedule; and

- (f) the Renewed Lease must reflect any variations to this Lease which become effective during the Term.

#### 4.3 Preparation of Renewed Lease

- (a) The Landlord's solicitors must prepare any Renewed Lease granted under clause 4 (**Option to renew**).
- (b) The Tenant must pay to the Landlord all reasonable costs of preparation, execution and registration of the Renewed Lease and pay any registration fees.

#### 4.4 Tenant and Landlord bound

The Landlord and the Tenant are bound from the commencement date of a Renewed Lease as if that lease had been signed, irrespective of whether the Landlord and the Tenant have signed the Renewed Lease.

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## 5 Rent

The Tenant must pay the Rent to the Landlord during the Term without demand and without deduction:

- (a) by consecutive monthly payments in advance commencing on the Commencement Date and then on the first day of each month;
- (b) in instalments equal to 1/12<sup>th</sup> of the Rent, the first and last payments being proportionate if necessary; and
- (c) by direct debit or other method approved by the Landlord, unless the Landlord gives the Tenant 30 days notice of alternate payment arrangements.

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## 6 Rent review

### 6.1 Percentage Increase

The Rent increases on and from each Percentage Increase Date to that sum calculated by increasing the Rent payable immediately before the relevant Percentage Increase Date by the Percentage Increase.

### 6.2 Index Review of Rent

The Rent increases on and from each CPI Review Date in accordance with the following formula:

$$R = \frac{A \times B}{C}$$

Where:

R = the Rent payable after the relevant CPI Review Date;

A = the Rent payable before the relevant CPI Review Date;

B = the Index Number last published before the end of the Lease Year just ended; and

C = the Index Number last published before the commencement of the Lease Year just ended.

### 6.3 Market Review of Rent

The Rent must be reviewed on and from each Market Review Date in accordance with the following procedure:

- (a) The Landlord may give written notice to the Tenant of the Landlord's assessment of the Current Market Rent for the Premises at any time after the date which is 3 months before the relevant Market Review Date.

(b) On and from each Market Review Date, the revised Rent is the greater of:

- (i) the Rent payable immediately before the relevant Market Review Date; and
- (ii) the Landlord's assessment of the Current Market Rent contained in the Landlord's last notice under clause 6.3(a) unless the Tenant disputes that assessment under clauses 6.4 to 6.7 (**Tenant's dispute of Rent**), in which case the revised Rent will be the Valuer's assessment of the Current Market Rent pursuant to clauses 6.4 to 6.7 (**Tenant's dispute of Rent**).

### 6.4 Tenant's dispute of Rent

- (a) If the Tenant disagrees with the Landlord's assessment of the Current Market Rent, the Tenant must notify the Landlord within 21 days after the date of the Landlord's notice under clause 6.3(a).
- (b) The parties must negotiate in good faith to try to agree the Current Market Rent for the Premises within 14 days after the date of the Tenant's notice under clause 6.4(a).
- (c) If the parties cannot agree the Current Market Rent for the Premises then either party may ask the President of the Australian Property Institute Inc. (NSW Division) or the President's nominee to nominate a Valuer to determine the Current Market Rent.
- (d) The Valuer appointed under clause 6.4(c) acts as an

expert and not as an arbitrator when determining the Current Market Rent.

## **6.5 Factors for determining the Current Market Rent**

The parties must direct the Valuer:

- (a) to take regard of:
  - (i) the terms of this Lease;
  - (ii) the rent that would reasonably be expected to be paid for the Premises if they were unoccupied and offered for Lease;
  - (iii) the Rent;
  - (iv) the Permitted Use;
  - (v) the rental value of comparable premises to the Premises; and
  - (vi) permanent structural improvements to the Premises made at the Tenant's expense which the Tenant is not entitled to remove;
- (b) to disregard:
  - (i) goodwill attributable to the Premises as a result of the activities of the Tenant; and
  - (ii) any Incentives offered or paid by the Landlord to the Tenant or other tenants or commonly being offered or paid by landlords to tenants in relation to leases of comparable premises;
- (c) to assume that the terms of the Lease have been complied with; and
- (d) where the Premises comprise more than one floor, determine the Current Market Rent on a floor by floor basis.

## **6.6 The determination**

The parties must direct the Valuer to:

- (a) make a determination within 1 month after the date the Valuer accepts the appointment;
- (b) give reasons for the Valuer's determination; and
- (c) specify the matters to which the Valuer had regard for the purposes of making the Valuer's determination.

## **6.7 Valuer's costs**

The costs of the Valuer are to be shared equally between the Landlord and the Tenant.

## **6.8 Deferral of increased Rent**

The Tenant must keep paying Rent at the rate payable immediately before the relevant Market Review Date until the new Rent is determined. When the new Rent is determined, the Tenant must pay the Landlord for any underpayment of Rent on the date for payment of rent in the following calendar month.

## **6.9 Combination Rent Review**

The Rent increases on and from each Combination Rent Review Date in accordance with the Combination Rent Review Method.

## **6.10 Time of the essence**

The time periods in this clause 6 (**Rent Review**) are essential.

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# **7 Outgoings and services**

## **7.1 Payment of Outgoings**

The Tenant must pay the Outgoings Contribution to the Landlord in the same manner and at the same time as the Rent.

## 7.2 Estimate of Outgoings

The Landlord must give the Tenant a written estimate of the Outgoings Contribution for each Outgoings Period during the term of this Lease:

- (a) before or as soon as reasonably practicable after the Commencement Date; and
- (b) at or about the time it provides an Expenditure Statement for the previous Outgoings Period.

## 7.3 Outgoings statement

The Landlord must use its reasonable endeavours to give the Tenant an audited Expenditure Statement promptly after the end of the relevant Outgoings Period.

## 7.4 Adjustments

The Landlord and the Tenant must make any necessary adjustment between:

- (a) the Outgoings Contribution paid by the Tenant for the previous Outgoings Period; and
- (b) the Outgoings Contribution payable by the Tenant for the previous Outgoings Period specified in the Landlord's Expenditure Statement,

14 days after the Landlord gives to the Tenant the relevant Expenditure Statement or at any other time agreed to by the Landlord and Tenant.

## 7.5 Accrual of Outgoings

Outgoings are deemed to accrue from day to day, regardless of the period for which they are levied, assessed or charged, and must be apportioned accordingly.

## 7.6 Change in Outgoings Contribution

If the lettable area of the Premises or the Marina changes, the Landlord may if appropriate (in the Landlord's reasonable opinion), amend the

Outgoings Contribution to reflect that change in lettable area.

## 7.7 Allocation of Outgoings

The Landlord may, acting reasonably, having regard to the parties having the benefit of the Outgoings, allocate some items of Outgoings (or a portion of some items) to particular:

- (a) tenants on the Marina, including the Tenant;
- (b) buildings on the Marina; or
- (c) parts of the Marina.

## 7.8 Reimbursement of Outlays

If the Landlord:

- (a) has paid amounts in relation to matters that the Tenant should have done under this Lease but has failed to do within the period specified in a notice issued by the Landlord for the purposes of clause 16.2(a); or
- (b) has carried out works or provided services at the request of the Tenant,

the Tenant must, within 7 days of demand, pay the Landlord for the relevant costs plus the Handling Fee for those amounts.

## 7.9 Charges for electricity, gas, water and telephone

The Tenant must pay the following charges in full and on time:

- (a) electricity, gas, water, or other Service which may from time to time be imposed or charged directly to the Tenant for those things consumed in or on the Premises to the supplier;
- (b) any telephone service connected to the Premises; and

- (c) all other charges and impositions imposed by any supplier, public utility or Government Agency for the supply of any Service to the Premises.

#### 7.10 Services provided by Landlord

- (a) The Landlord may offer to make Services available to the Tenant, on the terms and conditions published on the website of the Marina from time to time or as otherwise notified to the Tenant.
- (b) If the Tenant agrees to consume the Services provided by the Landlord the cost may be billed directly to the Tenant or as part of the Outgoings Contribution.

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## 8 Resumption, damage or destruction

### 8.1 Termination for resumption

This Lease may be terminated immediately by either party, by notice in writing to the other party if the whole or any material part of the Premises or the Marina is resumed or taken for any public purpose by a Government Authority and such resumption has a material adverse effect on the manner in which the Tenant can use the Premises. In these circumstances neither party has to pay compensation to the other but this does not affect any rights a party may have against the relevant Government Authority.

### 8.2 Abatement for damage or destruction

If the Premises are destroyed or damaged during the Term in a way which renders the Premises unfit for the use and occupation of the Tenant or the Premises become permanently inaccessible, then the Rent and Outgoings Contribution payable under this Lease abate from the date of damage or destruction (**Damage Date**) until:

- (a) the Premises are fit for the occupation and use of the Tenant; or
- (b) this Lease is terminated under clause 8.3 (**Termination of Lease**).

### 8.3 Termination of Lease

- (a) The Landlord may, within 1 month of the Damage Date, terminate the Lease by giving 1 month's written notice to the Tenant.
- (b) If the Landlord does not exercise its termination right under clause 8.3(a) the Landlord must notify the Tenant, within 4 months of the Damage Date, whether the Landlord intends to rebuild or reinstate the Premises.
- (c) The Landlord is not obliged to rebuild or reinstate the Premises or to make the Premises fit for the occupation and use of the Tenant, despite anything in this Lease.
- (d) The Tenant may terminate the Lease by giving 1 month's written notice to the Landlord if the Landlord does not start to rebuild or reinstate the Premises within a reasonable time (having regard to the nature of the damage or destruction and the usual time periods for obtaining consent for rebuilding from Government Agencies) after the Landlord's notice under clause 8.3(b).
- (e) If the Landlord starts to rebuild or reinstate the Premises it will use its reasonable endeavours to complete the rebuilding or reinstatement within a reasonable time, having regard to the nature and

extent of the damage or destruction.

#### 8.4 Termination not to adversely affect pre-existing rights

Termination of this Lease under this clause 8 (**Resumption, damage or destruction**) does not adversely affect the rights of either the Landlord or the Tenant for a breach or failure to comply with the Lease which occurs before the date of the destruction or damage including, without limitation, in relation to any Contamination caused as a result of the destruction or damage.

#### 8.5 Application

The Tenant's right to an abatement or to terminate the lease under this clause 8 (**Resumption, damage or destruction**) does not apply where the damage or destruction arises directly or indirectly from an act or omission of the Tenant or the Tenant's Agents, including, without limitation, a breach of the Lease or negligence.

Environmental Laws and the requirements of the Landlord's insurer (advised by the Landlord) about:

- (i) the Premises, the way the Premises may be used or the way the Premises must be used;
- (ii) the employees of the business carried out on the Premises; and
- (iii) additions, improvements or anything affixed to the Premises or used for the Permitted Use.

- (b) The Tenant must carry out work or make any arrangements in relation to the Premises or additions or improvements to the Premises, which is required by Law or directed by a relevant Government Agency except for any work of a structural or capital nature unless those works are required as a result of:

- (i) the Tenant's particular use or occupation of the Premises;
- (ii) the number, gender or other requirements of the Tenant's Agents; or
- (iii) the breach, damage, or negligent act or omission of the Tenant or the Tenant's Agents.

- (c) The Tenant must, as soon as practicable after receipt, provide the Landlord with a copy of any notice received from a Government Agency which relates to the Premises.

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## 9 Use of the premises by the Tenant

### 9.1 Permitted use

- (a) The Tenant must only use the Premises for the Permitted Use.
- (b) The Tenant has satisfied itself about the Permitted Use and the suitability of the Premises and the Marina for its activities and will not make any claim in relation to the activities of other tenants or occupiers in the Marina.
- (c) If the Permitted Use is permissible only with the consent of a Government Agency, the Tenant must obtain that consent at its own expense.

### 9.2 Tenant's compliance with laws

- (a) The Tenant must comply with applicable Laws including

### 9.3 Environmental Laws

- (a) If the Landlord considers that the Tenant may have or may be committing a breach of Environmental Laws it may engage an appropriately qualified consultant to investigate whether a breach has occurred.
- (b) If the consultant reports that the Tenant has committed or is committing a breach of Environmental Laws, then the Landlord may, without limiting its rights under the Lease:
  - (i) recover the costs of the consultant plus the Handling Fee from the Tenant; and
  - (ii) at the Landlord's election, serve a demand on the Tenant to rectify the breach or rectify the breach at the cost of the Tenant.
- (c) The Tenant must, at its cost, provide the management resources reasonably requested by the Landlord to assist in any investigation by a Government Agency in relation to a breach of Environmental Laws on the Marina.

### 9.4 Environmental Initiatives

- (a) The Tenant acknowledges that the Landlord undertakes and will undertake initiatives in relation to the Environment on the Marina including, without limitation, the collection of rainwater and stormwater (**Environmental Initiatives**).
- (b) The Tenant must co-operate with the Landlord regarding the Landlord's Environmental Initiatives including complying with the Landlord's reasonable requirements, so long as they do not conflict with the terms of the Lease.

### 9.5 General provisions relating to use

- (a) The Tenant must:
  - (i) only erect signs on the exterior of the Premises or install radio or telecommunications equipment with the Landlord's consent, which may not be unreasonably withheld;
  - (ii) allow at all reasonable times and on reasonable notice:
    - (A) intending purchasers of the Premises or the Marina to inspect the Premises; and
    - (B) intending tenants of the Premises to inspect the Premises within the period of 6 months immediately before the end of this Lease (unless the Tenant has executed a Renewed Lease) or during any holding over period;
  - (iii) allow the Landlord to erect signs on the Premises advertising the premises for sale and, within the period of 6 months immediately before the end of this Lease (unless the Tenant has executed a Renewed Lease) or during any holding over period, signs advertising the Premises for lease;

- (iv) at the end of the Lease, return to the Landlord all keys and security access cards for the Premises held by the Tenant and the Tenant's Agents; and
- (v) use its best endeavours to minimise noise emitted from the Premises or from the Tenant's craft used in connection with the Premises or the Marina.

- (b) The Tenant acknowledges that the Marina is a working area and boatyard and that the Tenant must, at all times while using or occupying the Premises or the Marina, use all due care and ensure that its Agents use all due care including ensuring that all children are under the physical hand in hand control of an adult.

obliged to do under this Lease, but has failed to do, and, if the Tenant fails to comply with the notice, the Landlord may enter the Premises and carry out the necessary works at the cost of the Tenant determined in accordance with clause 7.8 **(Reimbursement of Outlays)**.

### 10.3 Alterations to Premises

The Tenant must not make any alterations or additions in or to the Premises without the prior written consent of the Landlord, which may not be unreasonably withheld.

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## 10 Maintenance and repair and other work

### 10.1 Acknowledgment of condition

The Tenant acknowledges that:

- (a) the condition of the Premises at the Initial Commencement Date is as described in the Condition Report; and
- (b) any fittings installed by the Landlord as at the initial Commencement Date are fit for their purpose and, if used appropriately by the Tenant, will be fit for the Tenant's use for the period of any manufacturer's warranty for those items.

### 10.2 Repair of Premises during Lease

The Tenant must:

- (a) comply with the Tenant's Quality Obligations; and
- (b) repair any defects or carry out work specified in a notice from the Landlord which the Tenant is

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## 11 No assignment, sub-letting and mortgaging

### 11.1 No assignment

- (a) The Tenant must not do any of the following things without the prior written consent of the Landlord:
  - (i) assign, transfer or deal with any interest in the Premises; or
  - (ii) sub-let, grant a licence affecting the Premises, share or otherwise part with possession of the Premises.
- (b) The Landlord may withhold consent under clause 11.1(a) if:
  - (i) the proposed assignee or sublessee wants to change the Permitted Use;
  - (ii) the Tenant is in breach of any of its obligations under this Lease, unless that breach has been waived in writing by the Landlord or remedied to the

- satisfaction of the Landlord;
- (iii) the Landlord is not satisfied, acting reasonably, that the proposed assignee or sublessee is respectable, responsible, solvent and has sufficient financial resources and appropriate business experience to carry on the business proposed to be carried on by the proposed assignee or sublessee in the Premises;
  - (iv) the Landlord reasonably considers the proposed assignee or sublessee poses a threat to the security or reputation of the Landlord or the Marina or conflicts with the Landlord's proposed tenant mix for the Marina;
  - (v) the proposed assignee or sublessee cannot provide a suitable guarantor or guarantors to guarantee its obligations under the Lease to the satisfaction of the Landlord, acting reasonably; or
  - (vi) the Tenant has not complied with the Landlord's requirements contained in clause 11.2 (**Landlord's requirements**).

## 11.2 Landlord's requirements

- (a) The Tenant must pay the Landlord's reasonable costs, including legal costs, in relation to a dealing under clause 11.1(a), whether or not it is completed.
- (b) In the case of an assignment, the Tenant, the proposed assignee and any guarantor/s of the Tenant's obligations and the proposed assignee's obligations under this Lease must enter into

a deed of assignment with the Landlord in a form and on the terms required by the Landlord which may, without limitation, include the following terms:

- (i) that the proposed assignee must duly perform and observe the covenants in this Lease to be performed and observed by the Tenant;
  - (ii) those guarantees of performance of the Tenant's obligations by the guarantor/s as the Landlord reasonably requires; and
  - (iii) that there is no release of the Tenant or any guarantor from its obligations under the Lease.
- (c) In the case of a sublease, the Tenant and the proposed sublessee must enter into a deed of consent with the Landlord in a form and on the terms reasonably required by the Landlord including, without limitation, that the proposed sublessee agrees it will not cause or contribute to a breach of this Lease by the Tenant.

## 11.3 Share transfer

If the Tenant is a company which is not listed on the Australian Stock Exchange, the following things are regarded as an assignment of this Lease, and clauses 11.1 (**No assignment**) and 11.2 (**Landlord's requirements**) apply:

- (a) a transfer of more than 50% of the total shareholding of the company or a holding company of that company; or
- (b) a transfer or issue of shares which would result in 50% or more of the shares in the

company or a holding company of that company being held by people other than the people holding the shares in the company at the Commencement Date.

#### 11.4 Mortgaging and charging

The Tenant may not mortgage, charge or otherwise encumber its interest in the Premises.

- (b) if the Tenant does not remove those items from storage and pay the storage charges within 14 days of the items being placed in storage, deal with the Tenant's Property as if it were the property of the Landlord; and
- (c) continue to charge and recover Rent and Outgoings Contribution from the Tenant until it has complied with its obligations under the Lease.

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## 12 Tenant to vacate and make good

### 12.1 Return and make good of Premises on termination

On or before the Termination Date or the end of any holding over period the Tenant must:

- (a) peaceably vacate and surrender the Premises to the Landlord;
- (b) leave the Premises in a condition which complies with the Tenant's Quality Obligations;
- (c) remove the Tenant's Property from the Premises and the Marina;
- (d) make good any damage caused to the Premises as a result of the removal of the Tenant's Property and leave the Premises in a condition which complies with clause 12.1(b); and
- (e) repaint the Premises and repair any carpet in the Premises if reasonably required by the Landlord.

### 12.2 Failure to remove fixtures

If the Tenant fails to comply with clause 12.1 (**Return and make good of Premises on termination**), the Landlord may:

- (a) remove the Tenant's Property and store it at the cost and the risk of the Tenant;

### 12.3 Option to pay for make good

The Landlord and Tenant may agree that the Tenant is released from its obligations under clause 12.1 (**Return and make good of Premises on termination**) on the payment of an agreed amount which represents:

- (a) the cost of undertaking the obligations under that clause; and
- (b) the anticipated amount of Rent and Outgoings Contribution which would otherwise be payable during the anticipated period which would be required to carry out the obligations under that clause.

### 12.4 Landlord's right to inspect and repair

(a) The Landlord and its Agents may enter the Premises (together with contractors, workmen and any materials and appliances the Landlord considers necessary) at reasonable times on reasonable notice to:

- (i) view the state of repair of the Premises;
- (ii) carry out inspections, testing, repairs, renovations, maintenance, modifications,

extensions or alterations to the Premises or the Common Areas (including the Services) which the Landlord reasonably considers necessary or desirable for which the Tenant is not liable or, being liable, has failed to carry out;

- (iii) comply with the terms of any Laws affecting the Premises or the Marina or any notice served upon the Landlord or Tenant by any Government Agency; or
- (iv) exercise the powers and authorities of the Landlord under this Lease.

- (b) Despite anything in this Lease, the Landlord can enter the Premises without any notice in an emergency.

#### 12.5 Landlord's right to repair and maintain Landlord's Plant and Equipment

If the Tenant fails to maintain or repair the Landlord's Plant and Equipment in accordance with the Tenant's obligation to maintain the Premises, the Landlord may:

- (a) carry out or engage contractors to carry out the repair and maintenance of the Landlord's Plant and Equipment; and
- (b) recover the costs in accordance with clause 7.8 (**Reimbursement of Outlays**).

Reference Schedule for any one accident with automatic reinstatement;

- (ii) insurance against breakage, loss or damage to any plate glass in or on or about the Premises to the full insurable value;
- (iii) the Tenant's Property to its full insurable value; and
- (iv) other insurances which are required by law or which, in the Landlord's reasonable opinion, a prudent tenant would take out.

- (b) The Tenant must:

- (i) **Indemnities:** ensure the insurance policies cover the indemnities given by the Tenant to the Landlord in clause 14 (**Indemnities**);
- (ii) **note Landlord's interest:** note the Landlord's interest on the policies referred to in clause 13.1(a);
- (iii) **not vitiate insurance:** not do anything or allow anything to be done on the Premises which might vitiate or render void or voidable any insurance in relation to the Premises or the Marina or increase the rate of premium payable in relation to that insurance; and
- (iv) **pay extra premiums:** pay all extra premiums of insurance in relation to the Premises, the Marina and the contents of each taken out by the Landlord

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## 13 Insurance

### 13.1 Tenant's insurance

- (a) The Tenant must keep insurance with an insurance company approved by the Landlord against:
  - (i) public risk for an amount specified in Item 11 of the

which is charged due to the extra risk caused by a breach of clause 13.1 (**Tenant's insurance**) or by the Permitted Use.

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## 14 Indemnities

### 14.1 Assumption of responsibility

The Tenant agrees to take and be subject to the same responsibilities to which it would be subject in respect of persons and property if, during the Term, it was the owner and occupier of the freehold title of the Premises.

### 14.2 Tenant releases Landlord

Without limiting clause 14.1 (**Assumption of responsibility**), the Tenant:

- (a) occupies, uses and keeps the Premises at its own risk;
- (b) to the full extent permitted by Law, releases the Landlord and any Agent of the Landlord from all Claims resulting from:
  - (i) any accident, damage or injury occurring on the Premises;
  - (ii) injury to, loss of or damage to any property or effects in the Marina, any person entering, leaving, using or in the Marina and any person or property in the street or lands adjacent to the Marina; and
  - (iii) the Tenant's use and occupation of the Premises; and
- (c) acknowledges that the Landlord has no responsibility or liability for any loss of or damage to the Tenant's Property.

### 14.3 Tenant's indemnities

The Tenant must indemnify the Landlord for any Claim in respect of:

- (a) the negligent or careless use, misuse, waste or abuse by the Tenant or any Agent of the Tenant of the Services and facilities of the Premises or the Marina;
- (b) overflow or leakage of water in or from the Premises or which is caused by or contributed to by the Tenant or any Agent of the Tenant; or
- (c) the Tenant's use and occupation of the Premises.

### 14.4 Negligence or default of Landlord

The releases, responsibilities and indemnities of the Tenant in this clause 14 (**Indemnities**) do not apply to an act, matter or thing or consequence if it arises out of the wilful action, negligence, default or misconduct of the Landlord or its contractors.

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## 15 Landlord's covenants

### 15.1 Landlord's covenants

The Landlord must:

- (a) **quiet enjoyment:** subject to the Landlord's rights under this Lease and the Tenant complying with the Lease terms, allow the Tenant to peaceably possess and enjoy the Premises for the Term without any interruption or disturbance from the Landlord or any other person or persons lawfully claiming by, from or under the Landlord;
- (b) **allow access:** allow the Tenant to use the Common Areas in order to access the Premises;
- (c) **pay outgoings:** subject to the Tenant's obligation to pay the Outgoings Contribution, arrange for the payment of the Outgoings;

- (d) **maintain Premises:** take reasonable action to:
  - (i) maintain the Premises and the Marina in good working order;
  - (ii) carry out any necessary structural repairs to the Premises other than structural repairs required as a result of any act or omission of the Tenant or structural repairs which are the responsibility of the Tenant under this Lease; and
  - (iii) repair and keep the Common Areas clean at the Landlord's expense but subject to the Tenant's obligation to pay the Outgoings Contribution.

#### 15.2 No compensation

- (a) The Tenant may not terminate this Lease or claim an abatement of Rent or Outgoings Contribution if any of the Services or the lifts or airconditioning fail to function.
- (b) The Tenant may not claim damages if any of the Services or the lifts or airconditioning fail to function, except to the extent that the failure is due to the negligence, default or misconduct of the Landlord or its contractors.

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## 16 Default by Tenant and termination of lease

### 16.1 Action

If clause 16.2 (**Default by Tenant**) applies, the following may occur:

- (a) any biometric access system enabling access by the Tenant and its Agents to the Premises may be automatically restricted;

- (b) the Landlord may re-enter, repossess and enjoy the Premises and, accordingly, terminate the Lease;
- (c) the Landlord may call for the immediate surrender of the Tenant's estate and interest under the Lease; or
- (d) the Landlord may convert the Term into a monthly tenancy terminable on 1 month's written notice which notice may expire at any time.

### 16.2 Default by Tenant

Clause 16.1 (**Action**) applies if any one or more of the following events occurs:

- (a) the Tenant fails to comply with a notice from the Landlord requiring the Tenant to remedy any breach or default of any obligation under this Lease, within 14 days of service of the notice;
- (b) the Tenant repudiates its obligations under this Lease; or
- (c) an Insolvency Event occurs in relation to the Tenant or the Guarantor.

### 16.3 Interest on overdue money

- (a) The Tenant must pay:
  - (i) interest to the Landlord on amounts payable under this Lease but unpaid for 14 days, from and including the due date for payment to the date of actual payment at the rate set out in Item 12 of the Reference Schedule; and
  - (ii) the Dishonour Fee if a payment by the Tenant is Dishonoured.

- (b) Interest accrues on a daily basis and may be capitalised by the Landlord on the last day of each month.

#### 16.4 Essential terms

Without limitation, the obligations contained or implied in the following clauses are essential terms of this Lease:

- (a) to pay Rent in clause 5 (**Rent**);
- (b) to pay Outgoings Contribution in clause 7.1 (**Payment of Outgoings**);
- (c) the permitted use in clause 9.1 (**Permitted Use**);
- (d) to comply with Laws in clause 9.2 (**Tenant's compliance with laws**);
- (e) maintenance and repair of the Premises in clause 10 (**Maintenance and repair and other work**);
- (f) assignment and sub-letting in clause 11 (**No assignment, sub-letting and mortgaging**);
- (g) the Bank Guarantee in clause 19 (**Bank Guarantee**); and
- (h) the Security Deposit in clause 20 (**Security Deposit**).

#### 16.5 Damages claim of a right to re-entry

The Landlord may recover the amount of any loss or liability arising and any cost incurred (whether before or after the termination of the Lease) caused or contributed to by the Tenant's breach of this Lease including the Landlord's loss of the benefit of the Tenant performing its obligations under this Lease from the date of termination to the Termination Date.

#### 16.6 Mitigation of loss or damage

The Landlord must take reasonable steps to mitigate the Landlord's damages if the Tenant vacates the

Premises, whether with or without the Landlord's consent.

#### 16.7 Other rights not affected

This clause 16 (**Default by Tenant and termination of Lease**):

- (a) does not adversely affect a claim or other remedy which the Landlord has against the Tenant for a breach of the Tenant's obligations under the Lease; and
- (b) has effect despite any other provision of the Lease.

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## 17 Common areas

### 17.1 Controlled by Landlord

Common Areas are subject to the control of the Landlord who is entitled to construct, place, or remove any kiosk, sign, seats or other structures or improvements in the Common Areas. Anything placed in the Common Areas by the Landlord under this clause 17 (**Common Areas**) will not obstruct the Tenant's access to the Premises.

### 17.2 Landlord may vary Common Areas

The Landlord reserves the right from time to time to alter, modify, rebuild, relocate or construct improvements in the Common Areas and accesses to the Common Areas but must make sure that the Landlord maintains the Tenant's access to and from the Premises to public streets.

### 17.3 Restrictions on Common Areas

The Landlord reserves the right from time to time to restrict certain parts of the Common Areas to certain tenants or licensees of the Marina.

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## 18 Costs

### 18.1 Costs of lease

The Tenant must pay:

- (a) to the Landlord the reasonable legal costs and expenses of the Landlord in connection with this Lease;
- (b) any registration fees payable in connection with this Lease;
- (c) the costs of obtaining the consent of the Landlord's mortgagee, (if any); and
- (d) the legal costs and expenses of the Landlord incurred as a result of any default by the Tenant of this Lease.

### 18.2 Consent of Landlord's mortgagee

This Lease is conditional on the consent of the Landlord's mortgagees, if any, to the grant of this Lease.

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## 19 Bank guarantee

### 19.1 Tenant to provide Bank Guarantee

- (a) The Tenant must provide to the Landlord on or before the Commencement Date, a Bank Guarantee in the amount determined in accordance with Item 14 of the Reference Schedule and must maintain the Bank Guarantee throughout the Term.
- (b) On or before the commencement of any Renewed Lease, the Tenant must provide a replacement Bank Guarantee to the Landlord to reflect the amount determined in accordance with Item 14 of the Reference Schedule, having regard to the revised Rent and Outgoings Contribution payable by the Tenant.

### 19.2 Use of Bank Guarantee

- (a) If the Tenant is in default the Landlord is entitled from time to time in its absolute discretion to have recourse to the Bank Guarantee on account of the Rent, Outgoings Contribution or other money (including losses and damages) payable in connection with this Lease.
- (b) Clause 19.2(a) applies whether or not:
  - (i) the liability to pay that money arises by way of damages or otherwise; or
  - (ii) any judgment or other order of the Court has been made in respect of that money.

### 19.3 No change to Landlord's Rights

The rights of the Landlord under this clause do not adversely affect any other rights and remedies available to the Landlord.

### 19.4 Requirement for New Bank Guarantee

If payment is made under the Bank Guarantee, the Tenant must immediately provide a new Bank Guarantee to the Landlord so that the total of the Bank Guarantees held by the Landlord is equivalent to the sum in Item 14 of the Reference Schedule.

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## 20 Security Deposit

### 20.1 Tenant to provide Security Deposit

- (a) If the Landlord agrees that in lieu of a Bank Guarantee the Landlord will accept a Security Deposit, the Tenant must provide to the Landlord on or before the Commencement Date, a

Security Deposit in the amount determined in accordance with Item 15 of the Reference Schedule.

- (b) On or before the commencement of any Renewed Lease, the Tenant must provide the Landlord with a top up of the Security Deposit to reflect the amount determined in accordance with Item 15 of the Reference Schedule, having regard to the revised Rent payable by the Tenant.

## 20.2 Use of Security Deposit

- (a) If the Tenant is in default the Landlord is entitled from time to time in its absolute discretion to have recourse to the Security Deposit on account of the Rent, Outgoings Contribution or other money (including losses and damages) payable in connection with this Lease.
- (b) Clause 20.2(a) applies whether or not:
  - (i) the liability to pay that money arises by way of damages or otherwise; or
  - (ii) any judgment or other order of the Court has been made in respect of that money.

## 20.3 No change to Landlord's Rights

The rights of the Landlord under this clause do not adversely affect any other rights and remedies available to the Landlord.

## 20.4 Requirement for New Security Deposit

If payment is made under the Security Deposit, the Tenant must immediately top up or replace the Security Deposit so that the total of the Security Deposit held by the Landlord is equivalent to the sum in Item 15 of the Reference Schedule.

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## 21 Guarantee

- (a) The Guarantor guarantees the performance of the Tenant under the Lease and if clause 16.2 (**Default by Tenant**) applies the Guarantor is liable to the Landlord for any loss suffered by the Landlord and must pay the Landlord for the amount of any loss.
- (b) The Guarantor is liable even:
  - (i) if the Landlord does not sue the Tenant or otherwise enforce its rights against the Tenant;
  - (ii) if the Lease is unregistered or varied; and
  - (iii) after the Lease ends, for any breach that occurred before the Lease ended or arose out of the Lease ending.
- (c) If the Landlord sells its interest in the Premises it may assign the benefit of the Guarantor's obligations under the Lease.

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## 22 Dispute Resolution

### 22.1 Dispute

- (a) This clause applies to any dispute or disagreement arising out of or relating to the Lease other than a dispute under clause 6 (**Rent Review**) (**Dispute**).
- (b) A party claiming that a Dispute has arisen may give written notice to the other party setting out the nature of the Dispute (**Dispute Notice**).

## 22.2 Mediation

- (a) If the parties do not resolve the Dispute by negotiation within 10 Business Days of the date of a Dispute Notice, a party may refer the Dispute for mediation.
- (b) If a Dispute has been referred to mediation under clause 22.2(a), the parties must participate in the mediation in good faith in accordance with this clause 22 (**Dispute Resolution**).
- (c) The mediator must be a person agreed between the parties, or failing agreement on the appointment of a mediator within 15 Business Days after the date of the Dispute Notice, either party may request the chairman of the Australian Commercial Dispute Centre to appoint a mediator.
- (d) Any mediator appointed pursuant to this clause must:
  - (i) except with the consent of the parties, have no interest or duty which conflicts or may conflict with his or her function as mediator and must disclose any relevant interest or duty before appointment;
  - (ii) not be an employee of either of the parties; and
  - (iii) undertake to keep confidential all matters coming to his or her knowledge in the course of his or her appointment and performance of his or her duties as mediator.
- (e) The mediation will take place at a time and place to be agreed between the parties, or, failing agreement within 5 Business Days of the mediator's appointment, at a time and place nominated by the mediator.
- (f) The mediation, including all preliminary steps, must be conducted in such manner as the mediator considers appropriate, and the mediator may give directions to the parties as to the procedure for the mediation including preliminary steps.
- (g) Without limiting the mediator's powers in clause 22.2(f), the mediator may give directions as to:
  - (i) the holding of preliminary conferences prior to the mediation conference, including the time and place at which parties are required to attend;
  - (ii) the exchange by the parties of brief written outlines of the issues involved; and
  - (iii) service on the mediator and the parties of other documents or information.
- (h) All communications forming part of the mediation are made on a without prejudice basis and may not be disclosed in, relied upon or be the subject of a subpoena to give evidence or produce documents in, any arbitral or judicial proceedings in respect of the Dispute. In particular, the following communications are without prejudice:
  - (i) any settlement proposal, whether made by a party or the mediator;
  - (ii) any communication evidencing the willingness of a party to consider any settlement proposal;

- (iii) any admission or concession or other statement or document made by a party; and
  - (iv) any statement or document made by the mediator referring to any of the above.
- (i) If settlement is reached at the mediation conference, the terms of the settlement must be written down and signed by the parties (**Mediation Settlement**).
  - (j) In the event that part or all of the Dispute is settled, either party may enforce the terms of the Mediation Settlement by judicial proceedings and adduce evidence of and incidental to the Mediation Settlement including from the mediator and any other person engaged in the mediation in those proceedings.
  - (k) Each party will bear their own professional and expert costs of the mediator and associated with the mediator, for example room hire fees will be shared equally by the parties.
  - (l) For the avoidance of doubt nothing in this clause prevents a party from commencing or proceeding with any litigation proceedings.
  - (m) This clause does not merge upon termination or expiry of the Lease.
- liability for GST calculated on Rent, Services, Outgoings Contribution or any other consideration for the supply of the right to occupy the Premises or the supply of any other right, good, service, benefit or thing supplied under this Lease.
  - (c) The additional amount which the Tenant must pay to the Landlord is the amount which is equal to the consideration paid by the Tenant for the relevant Supply multiplied by the prevailing GST rate.
  - (d) The Tenant must pay that additional amount at the same time and in the same manner as the consideration for the Supply to which the additional amount relates.
  - (e) The Landlord must deliver to the Tenant a Tax Invoice in a form which complies with the GST Law for each payment by the Tenant under clause 23(b), at or before the time for payment of GST by the Tenant.
  - (f) If the Landlord is entitled to be reimbursed or indemnified for any cost, expense or liability by the Tenant the amount payable by the Tenant in respect of such cost, expense or liability will not include any amount in respect of GST for which the Landlord is entitled to an Input Tax Credit.

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## 23 GST

- (a) An amount payable by the Tenant to the Landlord under this Lease is exclusive of GST unless stated otherwise.
- (b) The Tenant must pay to the Landlord an additional amount if the Landlord is liable for GST for a Taxable Supply under this Lease or any renewal or extension of this Lease. This includes, without limitation,

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## 24 Works by Landlord

The Landlord may agree to undertake capital works to the Premises at the request of the Tenant if the parties agree on the basis on which the Landlord will recover the costs of those works from the Tenant, including a component representing a commercial rate of return on capital.

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## 25 Licensed Areas

### 25.1 Licensed Areas

- (a) The Landlord licenses the Licensed Areas to the Tenant on a non-exclusive basis (as against the Landlord).
- (b) Other than in relation to non-exclusive use of the Licensed Area, the Landlord and Tenant agree that the provisions of this Lease apply to the Tenant's use of the Licensed Areas, to the extent applicable.

### 25.2 Additional Areas

- (a) If the Tenant uses or occupies areas on the Marina other than the Premises, Common Areas or Licensed Areas, the Landlord is entitled to charge the Tenant, and the Tenant must pay to the Landlord in the same manner and at the same time as the Rent, a licence fee for the area used and occupied for the period of use.
- (b) In this clause 25.2 (**Additional Areas**), the licence fee for the area will be calculated by the Landlord according to the current annual open market rental value of the area.

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## 26 Development

### 26.1 Development

If the Landlord intends to undertake refurbishment or development of the Land (**Development**), the Landlord may terminate this Lease by 3 months written notice to the Tenant (**Termination Notice**) provided that:

- (a) the Landlord has provided to the Tenant (together with the Termination Notice) details of the proposed Development that the Landlord intends to carry out; and

- (b) the Development cannot, in the reasonable opinion of the Landlord, be carried out practicably without vacant possession of the Premises.

### 26.2 No compensation

The Tenant is not entitled to any compensation from the Landlord if the Landlord exercises its right under clause 26.1 (**Development**) to Develop the Land.

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## 27 General

### 27.1 Change of Landlord

If the Landlord deals with its interest in the Premises or the Marina so that another person acquires the interest of the Landlord or a head lease over the Premises the Tenant must perform its obligations in favour of that person and releases the Landlord from any obligation under this Lease for the period during which it is not landlord.

### 27.2 Rules

The Tenant must comply with the Rules to the extent they are not inconsistent with the Lease. The Landlord may amend the Rules by giving the Tenant 30 days notice that an updated set of Rules has been posted on the website of the Marina.

### 27.3 Subdivide

The Landlord may take all actions in order to subdivide the Land or the Marina by way of strata, community, neighbourhood or other subdivision including creating any necessary easement, covenant or restriction and the Tenant must provide all reasonable assistance including providing consents. The Tenant irrevocably appoints the Landlord as its attorney to sign any consents or do anything else the Tenant is required to do under this clause if the Tenant fails to do so.

## 27.4 Consents and approvals

Except as expressly provided in a Lease, a party may not unreasonably withhold any consent or approval under a Lease.

## 27.5 Cumulative rights

Except as expressly provided in a Lease, the rights of a party under a Lease are in addition to and do not exclude or limit any other rights or remedies provided by Law.

## 27.6 Non representations

Each party represents and warrants that it has not relied on any representations or warranties about the subject matter of a Lease except as expressly provided in the Lease.

## 27.7 Further assurances

Except as expressly provided in the Lease, each party must, at its own expense, do all things reasonably necessary to give full effect to the Lease and the matters contemplated by it.

## 27.8 Governing law

A Lease is governed by the Laws of the State.

## 27.9 Jurisdiction

Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the State.

## 27.10 Notices

(a) A notice, consent or other communication under a Lease is only effective if it is:

- (i) in writing and in legible English, signed by or on behalf of the party giving it;
- (ii) addressed to the party to whom it is to be given; and

(iii) either:

- (A) sent by pre-paid mail (by airmail, if the addressee is overseas) or delivered to that party's address;
- (B) sent by fax to that party's fax number; or
- (C) sent by email to that party's email address.

(b) Subject to clause 27.10(c), a notice, consent or other communication under a Lease is, in the absence of earlier receipt, regarded as given and received:

- (i) if it is delivered, on delivery at the address of the relevant party;
- (ii) if it is sent by fax, at the time and on the day it was successfully sent;
- (iii) if it is sent by mail, on the 3rd Business Day after the day of posting, or if to or from a place outside Australia, on the 7th Business Day after the day of posting; or
- (iv) if it is sent by email, at the time of sending, unless an error message is received.

(c) If a notice, consent or other communication under a Lease is given and received on a day that is not a Business Day or after 5.00 pm (local time in the place of receipt) on a Business Day, it is regarded as being given and received at 9.00 am on the next Business Day.

- (d) For the purposes of this clause 27.10 (**Notices**), a party's address, fax number and email address are those set out in Item 13 of the Reference Schedule:

#### **27.11 Relationship of the parties**

Except as expressly provided in a Lease:

- (a) nothing in a Lease is intended to constitute a fiduciary relationship or an agency, partnership or trust; and
- (b) no party has authority to bind any other party.

#### **27.12 Survival**

Any clauses or terms which by their nature are intended to survive termination or expiry of a Lease, do so.

#### **27.13 Severability**

Any term of a Lease which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity or enforceability of the remainder of the Lease is not affected.

#### **27.14 No third party rights**

Except as expressly provided in a Lease:

- (a) each person who executes a Lease does so solely in its own legal capacity and not as agent or trustee for or a partner of any other person; and
- (b) only those persons who execute a Lease have a right or benefit under it.

#### **27.15 Variation**

No variation of a Lease is effective unless made in writing and signed by an officer of each party.

#### **27.16 Waiver**

- (a) No waiver of a right or remedy under a Lease is effective unless it is in writing and signed by the party granting it. It is only effective in the specific instance and for the specific purpose for which it is granted.
- (b) A single or partial exercise of a right or remedy under a Lease does not prevent a further exercise of that or of any other right or remedy.
- (c) Failure to exercise or delay in exercising a right or remedy under a Lease does not operate as a waiver or prevent further exercise of that or of any other right or remedy.

#### **27.17 Voting Rights**

If the Tenant, by reason of being an occupier or ratepaying tenant of the Land, is entitled to vote in local council elections either as a natural person or by nominating a natural person but elects not to exercise its right to register to be listed on the electoral roll, the Tenant agrees to nominate a natural person nominated and approved by the Landlord who will register and exercise that voting right.

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## Schedule 1 — Dictionary

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### 1 Dictionary

In this Lease:

**Agent** means any agent, servant, employee, contractor, sub-contractor, sub-lessee or invitee.

**Bank Guarantee** means a banker's undertaking or guarantee which:

- (a) is provided by an Australian trading bank or other financial institution which the Landlord may in its absolute discretion accept;
- (b) is irrevocable and does not contain a termination or expiry date which is earlier than 12 months after the Ultimate Expiry Date;
- (c) states that the provider of the bank guarantee must not inquire as to whether circumstances have arisen under this Lease which entitle the Landlord to make a demand under the bank guarantee or contains other language which satisfies the Landlord, acting reasonably; and
- (d) contains any other terms acceptable to the Landlord in its absolute discretion.

**Business Day** means a day on which banks are open for business excluding Saturdays, Sundays and public holidays in the State.

**Claim** means any cost, claim, expense, loss, damages, demand or liability of any kind.

**Combination Rent Review Date** means each date (if any) specified in Item 6(c)(v) or 8(e) of the Reference Schedule.

**Combination Rent Review Method** means the rent review method (if any) specified in Item 6(b)(iv), 6(c)(vi) or 8(f) of the Reference Schedule.

**Common Areas** means any part of the Marina provided by the Landlord for the common use by the Tenant and other occupants of the Marina and their invitees

and includes pedestrian ways, forecourts, landscaped areas, entrances, lobbies, corridors, toilets, stairways, elevators and the common amenities and conveniences.

**Commencement Date** means the date in Item 5(a) of the Reference Schedule.

**Condition Report** means the report prepared by the Landlord and contained in Exhibit 3 to the Lease.

**Contamination** has the same meaning as in the *Contaminated Land Management Act 1997* (NSW).

**Corporations Act** means *Corporations Act 2001* (Cth).

**CPI Rent Review** means a rent review in accordance with clause 6.2 (**Index Review of Rent**).

**CPI Review Date** means each date (if any) specified in Item 6(c)(iii) or 8(c) of the Reference Schedule.

**Current Market Rent** means the current annual open market rental value of the Premises based on a lease between a willing landlord and a willing tenant granted with vacant possession and on the same terms as this Lease, except as to Rent.

**Damage Date** has the meaning given in clause 8.2 (**Abatement for damage or destruction**).

**Dishonour** means a direct debit, direct deduction or other payment by the Tenant is dishonoured or refused by the Tenant's bank.

**Dishonour Fee** means any amount charged to the Lessor in respect of a payment by the Tenant being Dishonoured.

**Dispute** means a dispute referred to in clause 22.1(a).

**Dispute Notice** means the notice pursuant to clause 22.1(b).

**Environment** means components of the earth, including:

- (a) land, air and water; and

- (b) any layer of the atmosphere; and
- (c) any organic or inorganic matter and any living organism; and
- (d) human-made or modified structure and areas,

and includes interacting natural ecosystems that include components referred to in paragraphs (a) to (d) above.

**Environmental Initiatives** has the meaning given in clause 9.4(a).

**Environmental Law** means any Law relating to the Environment including, without limitation, a Law relating to the use of land; planning; environmental assessment; environmental heritage; water; water catchments; pollution of air, soil, chemicals; pesticides; hazardous substances; radioactive substances; the ozone layer; waste; dangerous goods; building regulation; the occupation of buildings; public health; environmental hazard; any aspect of protection of the Environment; or the enforcement or administration of any such Law.

**Expenditure Statement** means a statement which states the expenditure on Outgoings for the relevant Outgoings Period.

**Government Agency** means a government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity whether foreign, federal, state, territorial or local.

**GST** means a goods and services tax, or a similar value added tax, levied or imposed under the GST Law.

**GST Law** has the meaning given to it in the *New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Guarantor** means the party (if any) listed in Item 16 of the Reference Schedule.

**Handling Fee** means a fee calculated as 20% of the relevant amount payable or such higher amount as is notified by the Landlord to the Tenant giving 30 days notice.

**Incentives** means any fitout payments, works carried out by the Landlord for the

Tenant, rent concessions or other benefits or incentives granted by the Landlord to the Tenant in connection with the grant of the Lease.

**Index Number** means the All Groups Consumer Price Index number relevant to the State and published from time to time by the Australian Bureau of Statistics.

**Initial Commencement Date** means the date the Tenant first occupied the Premises.

**Insolvency Event** means the occurrence of any one or more of the following events in relation to any person:

- (a) an application is made to a court for an order that it be wound up, declared bankrupt or that a provisional liquidator or receiver or receiver and manager be appointed, and the application is not withdrawn, struck out or dismissed within 21 days of it being made;
- (b) a liquidator, provisional liquidator, administrator or a Controller is appointed;
- (c) it enters into an arrangement or composition with one or more of its creditors, or an assignment for the benefit of one or more of its creditors;
- (d) it proposes a winding-up or dissolution or reorganisation (except for an amalgamation or reconstruction as reasonably approved by the Landlord), moratorium, deed of company arrangement or other administration involving one or more of its creditors;
- (e) it becomes an Insolvent under Administration, is insolvent as disclosed in its accounts, or otherwise states that it is insolvent, or it is presumed to be insolvent under an applicable law;
- (f) it is taken to have failed to comply with a statutory demand as a result of section 459F(1) of the Corporations Act;

- (g) a notice is issued under sections 601AA or 601AB of the Corporations Act;
- (h) a writ of execution is levied against it;
- (i) it ceases to carry on business; or
- (j) anything occurs under the law of any jurisdiction which has a substantially similar effect to any of the above paragraphs of this definition.

**Land** means the land described in Item 1 of the Reference Schedule.

**Landlord** includes, in the case of a corporation, its successors in title and assigns and, in the case of a natural person, that person's heirs, executors, administrators and assigns.

**Landlord's Plant and Equipment** means the plant and equipment owned by the Landlord which is located in the Premises or exclusively services the Premises.

**Law** includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance or by-law of any Government Agency.

**Lease** means the lease or tenancy or agreement to lease or periodic tenancy that exists between the Landlord and the Tenant in relation to the Premises of whatever nature and whether in law or in equity.

**Lease Year** means a 12 month period, the first commencing on and from the Commencement Date.

**Licensed Areas** means the areas (if any) described in Item 17 of the Reference Schedule.

**Marina** means the marina known as "Sirsi Marina", a plan of which is contained in Exhibit 1 to the Lease.

**Market Rent Review** means a rent review in accordance with clause 6.3 (**Market Review of Rent**).

**Market Review Date** means each date (if any) specified in Item 6(c)(iv) or 8(d) of the Reference Schedule.

**Mediation Settlement** has the meaning given in clause 22.2(j).

**Option** means the grant by the Landlord to the Tenant of a right to renew this Lease for the Option Term.

**Option Notification Period** means the period stated in Item 7 of the Reference Schedule.

**Option Term** means the term described in Item 6(a) of the Reference Schedule.

**Outgoings** means all amounts paid or payable by the Landlord in connection with the Premises, the Marina or the Landlord's Plant and Equipment including but not limited to:

- (a) rates, land tax (on a multiple basis) and any other charges imposed by any Government Agency;
- (b) taxes (except income and capital gains tax), levies, imposts, deductions, charges, withholdings and duties imposed by any Government Agency including any tax imposed as a consequence of the receipt of rent or other money or as a consequence of the Landlord having an estate or interest in the Premises or the Marina;
- (c) usage charges for water, sewerage/trade waste services and other Services;
- (d) insurance for:
  - (i) the full insurable value of the improvements forming the Marina, including the Premises and the Landlord's property;
  - (ii) public liability;
  - (iii) workers' compensation; and
  - (iv) any other risks which the Landlord reasonably considers appropriate;
- (e) cleaning those parts of the Premises and Marina which no tenant or licensee is obliged to

- clean, including the cost to the Landlord of hiring or leasing vehicles or equipment for that purpose;
- (f) removal and disposal of all waste and other garbage including the cost of hiring, leasing, operating and maintaining any plant and equipment for that purpose;
  - (g) repair, maintenance and replacement of the Landlord's Plant and Equipment where it is not the responsibility of a tenant, but excluding items of a structural or capital nature;
  - (h) indoor and outdoor gardening, landscaping, environmental and caretaking services, security services;
  - (i) providing Services to the Marina including the Premises including Services provided by a Government Agency;
  - (j) repairing, maintaining and painting the Premises including the plant and equipment, fixtures, fittings, furniture, furnishings and other property provided by the Landlord in the Premises but excluding items of a structural or capital nature;
  - (k) operating, supplying, maintaining and repairing the Services including lighting, heating and airconditioning the Common Areas, pest control, fire services, toilet and washroom facilities and requisites, public address systems, security equipment, emergency evacuation systems, building management systems, all plant and equipment and the amounts paid to the personnel necessary to operate, supply, maintain and repair those Services to the standard required by the Landlord, any authorities and the Law but excluding items of a structural or capital nature;
  - (l) operating and maintaining signs and tenant directories; and
  - (m) operating and maintaining any other facilities in the Premises and Marina which are provided for customer service from time to time.

**Outgoings Contribution** means the proportion of the Outgoings (if any) payable by the Tenant described in Item 10 of the Reference Schedule.

**Outgoings Period** means the period from 1 January to 30 June in each year and the period from 1 July to 31 December in each year.

**Percentage Increase** means the percentage (if any) specified in Item 6(b)(i), 6(c)(ii) or 8(b) of the Reference Schedule.

**Percentage Increase Date** means each of the dates (if any) specified in Item 6(c)(i) or 8(a) of the Reference Schedule.

**Permitted Use** means the use described in Item 9 of the Reference Schedule.

**Premises** means the Premises described in Item 2 of the Reference Schedule and includes the Landlord's Plant and Equipment and other fixtures and fittings contained in the Premises, the boundaries of the Premises being:

- (a) the internal finished surface of walls, but the centre line of inter-tenancy walls;
- (b) the lower surface of the ceiling (above any false ceiling); and
- (c) the upper surface of the floor (under any floor covering).

A plan of the Premises is contained in Exhibit 2 to the Lease.

**Reference Schedule** means the schedule called "Reference Schedule" which is attached to the Lease using the terms of this Registered Memorandum.

**Registered Memorandum** means this document.

**Renewed Lease** means a new lease granted under clause 4 (**Option to renew**) or a variation of this Lease to reflect the new lease granted under clause 4 (**Option to renew**).

**Rent** means the annual amount set out in Item 4 of the Reference Schedule or if that amount has been varied or reviewed,

then the amount as varied, from time to time.

**Rules** means the rules of the Premises and the Marina which are displayed on the website of the Marina.

**Security Deposit** means the security deposit payable to the Tenant specified in Item 15 of the Reference Schedule.

**Services** means all services supplied to or consumed on the Premises including without limitation gas, electricity, water, sewage and telephone and where the context permits includes the conduits, pipes or other means by which these services are provided to the Premises.

**State** means the State or territory in which the Premises are located.

**Tenant** includes in the case of a corporation its successors in title and in the case of a natural person that person's heirs and administrators.

**Tenant's Property** means the Tenant's fixtures, fittings, stock and other property.

**Tenant's Quality Obligations** means taking all steps reasonably necessary to ensure:

- (a) that the Premises are in the condition they were in at the original Commencement Date of the Lease (fair wear and tear excepted) and of a quality which is fit for the purpose for which they are used and intended to be used including being clean, tidy, undamaged and in working order;
- (b) that reasonable and commonly accepted protection measures are implemented to protect the Premises including, without limitation, the use of carpet protectors and bollards; and
- (c) that the Tenant and the Tenant's Agents do not cause any damage or untidiness to the Services, Common Areas, Premises or the Marina.

**Term** means the term of this Lease set out in Item 5(c) of the Reference Schedule, commencing on the Commencement Date.

**Termination Date** means the date specified in Item 5(b) of the Reference Schedule.

**Ultimate Expiry Date** means the expiry date of the Lease if all options under the Lease were exercised.

**Valuer** means a person who:

- (a) is a full member of the President of the Australian Property Institute Inc. (NSW Division) and has been for the last five years;
- (b) holds a licence to practise as a valuer of premises of the nature of the Premises;
- (c) is active in the relevant market at the time of his or her appointment; and
- (d) has at least five years experience in valuing premises of the nature of the Premises.

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## 2 Interpretation

In this Lease the following rules of interpretation apply unless the contrary intention appears:

- (a) headings are for convenience only and do not affect the interpretation of this Lease;
- (b) the singular includes the plural and vice versa;
- (c) words that are gender neutral or gender specific include each gender;
- (d) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (e) the words 'such as', 'including', 'particularly' and similar expressions are not used as, nor are intended to be, interpreted as words of limitation;
- (f) a reference to:
  - (i) a person includes a natural person, partnership, joint venture, Government Agency, association,

- corporation or other body corporate;
- (ii) a thing (including, but not limited to, a chose in action or other right) includes a part of that thing;
  - (iii) a party includes its successors and permitted assigns;
  - (iv) a document includes all amendments or supplements to that document;
  - (v) a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to this Lease;
  - (vi) this Lease includes all schedules and attachments to it;
  - (vii) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity and is a reference to that law as amended, consolidated or replaced;
  - (viii) an agreement other than this Lease includes an undertaking, or legally enforceable arrangement or understanding, whether or not in writing; and
  - (ix) a monetary amount is in Australian dollars;
- (g) an agreement on the part of two or more persons binds them jointly and severally;
  - (h) when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day;
  - (i) in determining the time of day, where relevant to this Lease, the relevant time of day is:
    - (i) for the purposes of giving or receiving notices, the time of day where a party receiving a notice is located; or
    - (ii) for any other purpose under this Lease, the time of day in the place where the party required to perform an obligation is located;
- (j) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Lease or any part of it; and
  - (k) if there is any conflict between the body of the Lease and this Registered Memorandum the terms of the Lease prevail.

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