

LAND TITLE ACT

REGISTRATION CONFIRMATION STATEMENT

ENVIRONMENT AND RESOURCE MANAGEMENT, QUEENSLAND

Dealing Registered:

Date: 02/02/2010 at 14:57

STANDARD TERMS DOCUMENT No 713029791

Lodgement No: 2817809
Office: ROCKHAMPTON

Email: kellie.anderson@rrc.qld.gov.au
ROCKHAMPTON REGIONAL COUNCIL
ATT: K. ANDERSON
PO BOX 1860
ROCKHAMPTON 4700

GENERAL REQUEST

Duty Imprint

FORM 14 Version 4
Page 1 of 20

Dealing Number



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1. Nature of request

Request to register Standard Terms Document for a Lease

Lodger (Name, address, E-mail & phone number)

Rockhampton Regional Council
PO Box 1860
ROCKHAMPTON QLD 4700
Kellie.Anderson@rre.qld.gov.au
(07) 4936 8051

Lodger
Code
660

2. Lot on Plan Description

N/A

County

Parish

Title Reference

3. Registered Proprietor/State Lessee

N/A

4. Interest

N/A

5. Applicant

ROCKHAMPTON REGIONAL COUNCIL

6. Request

I hereby request that: pursuant to section 318 of the Land Act 1994, the attached Standard Terms Document containing Lease covenants for Rockhampton Regional Council be registered.

7. Execution by applicant

Rockhampton Regional Council

Mayor - Bradley Noel Carter

Chief Executive Officer - Alastair
Thomas Dawson

Execution Date

Applicant's or Solicitor's Signature

Note: A Solicitor is required to print full name if signing on behalf of the Applicant

Title Reference

1 INTERPRETATION

1.1 Terms and Reference Schedule

- (1) Terms in bold in the Reference Schedule have the meaning shown below the term.
- (2) Item numbers refer to those in the Reference Schedule unless stated otherwise.

1.2 Definitions

In this Trustee Lease, terms defined and references contained in the Mandatory Terms have the same meaning when used in this Schedule. In addition:

- (1) "**Agreed Proportion of Outgoings**" means the percentage in Item 5 of the Reference Schedule
- (2) "**Air Conditioning Equipment**" means all plant, ductwork and other associated equipment used for the manufacture and reticulation of conditioned air to the premises (if any) and includes all mechanical ventilation
- (3) "**API**" means the Australian Property Institute (Inc) Queensland Division
- (4) "**Bank Guarantee**" means an unconditional and irrevocable undertaking by a bank for the amount in Item 9 of the Reference Schedule on terms acceptable to the **Trustee**
- (5) "**Building**" means all buildings and improvements on the Trust Land
- (6) "**CPI**" means the Consumer Price Index (All Groups) for Brisbane published by the Australian Bureau of Statistics. If that index no longer exists, "**CPI**" means an index that the president of the **API** decides best reflects changes in the cost of living in the relevant city in which the **Premises** are located
- (7) "**Early Termination Dates**" means the dates inserted in Item 9 of the Reference Schedule
- (8) "**Expiry Date**" means the day inserted in Item 6 of the Form 7
- (9) "**Financial Year**" means 1 July to 30 June
- (10) "**Mandatory Terms**" means the Mandatory Standard Terms Document registered at the Department of Environment & Resource Management under Dealing Number 711932933
- (11) "**Outgoings**" means the Trustee's reasonable expenses directly attributable to the operation, maintenance or repair of the **Premises** and charges, levies, premiums, rates or taxes payable by the **Trustee** because it is the owner of the **Premises** and such expenses include, but will not be limited to, all costs associated with:
 - (a) rates, taxes and charges payable to any government or other authority (excluding any State Land Tax)
 - (b) rubbish removal
 - (c) lifts and escalators
 - (d) fire protection and prevention
 - (e) security
 - (f) insurance premiums
 - (g) repairs and maintenance

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- (h) costs for the control of pests, vermin or insects or other similar infestation
- (i) if the **Premises** are under the Body Corporate and Community Management Act 1997, then Body Corporate Administration levies
- (12) **"Permitted Use"** means the use set out in Item 6 of the Reference Schedule
- (13) **"Services"** means all gas, electricity, telephone, water, sewerage, fire prevention, ventilation, airconditioning, hydraulic, elevator and security services and all other utilities, services or systems provided in the **Premises**
- (14) **"Trustee's Property"** means any property owned by the **Trustee** in or on the **Premises**
- (15) **"Trustee Lessee's Improvements and Alterations"** means alterations and improvements owned or made by the **Trustee Lessee** to the **Premises**
- (16) **"Trustee Lessee's Property"** means all fixtures, fittings, equipment, stock and other articles on or in the **Premises** owned by the **Trustee Lessee** including the **Trustee Lessee's Improvements and Alterations**
- (17) **"Valuer"** means a person who has at least three (3) years experience in valuing the kind of premises leased by this Trustee Lease.

1.3 Reference

- (1) Reference to:
 - (a) the singular includes the plural and the plural includes the singular
 - (b) a person includes a body corporate
 - (c) a party includes the party's executors, administrators, successors and permitted assigns.
 - (d) month or monthly means calendar month or calendar monthly
 - (e) a right includes a remedy, authority of power.
- (2) If a party consists of more than one person, this Trustee Lease binds them jointly and each of them severally.
- (3) Headings are for convenience only and do not form part of this Trustee Lease or affect its interpretation.

2 RENT AND OTHER PAYMENTS

2.1 Payments

The **Trustee Lessee** must pay the **Trustee**:

- (a) the **Rent**
- (b) the **Agreed Proportion of Outgoings**
- (c) stamp duty assessed on the Trustee Lease and costs of registering the Trustee Lease
- (d) costs of the survey plan attached to the Trustee Lease
- (e) the **Trustee's** reasonable legal costs and expenses of and incidental to the negotiation, preparation and execution of this Trustee Lease

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- (f) all reasonable costs and expenses incurred by the **Trustee** in relation to any notice given to the **Trustee Lessee** in accordance with this Trustee Lease, lawful determination or attempted determination of this Trustee Lease, the surrender of this Trustee Lease, the granting of any consents, proceedings lawfully brought by the **Trustee** to enforce the **Trustee Lessee's** performance and obligations under this Trustee Lease
- (g) any reasonable additional or unusual charges and expenses incurred by the **Trustee** at the request of the **Trustee Lessee**
- (h) any tax or levy in the nature of a goods and services tax or consumption tax or other tax levied directly on or relating to the receipt of payments including **Rent** incurred by the **Trustee** during the **Term**
- (i) any other payments arising from the **Trustee Lessee's** use of the **Premises**.

2.2 Manner of Payment

- (1) The **Trustee Lessee** must pay the **Rent**:
 - (a) by equal monthly instalments in advance on the first day of each month
 - (b) the first payment must be made on the **Commencement Date**
 - (c) if necessary the first and last instalments must be apportioned on a daily basis.
- (2) The **Trustee Lessee** must pay the **Agreed Proportion of Outgoings** for each **Financial Year** in the manner notified in writing by the **Trustee** and in the absence of notification in the same manner as **Rent**. A certificate by the **Trustee** or authorised representative of the **Trustee** is prima facie evidence of the **Outgoings** for each **Financial Year**.
- (3) The **Trustee Lessee** must make all other payments promptly to the relevant assessing authority if assessed directly against the **Trustee Lessee** but otherwise to the **Trustee** upon receipt of an invoice.
- (4) Payments must be made as the **Trustee** directs.
- (5) Within ninety (90) days after the expiry of each **Financial Year** the **Trustee** must provide the **Trustee Lessee** with a statement containing the actual **Outgoings** for the **Premises** for the immediately preceding **Financial Year**. Within fourteen (14) days of being provided with a statement, the **Trustee** must refund any overpaid **Outgoings** and the **Trustee Lessee** must pay any shortfall.

2.3 Interest

If the **Trustee Lessee** is late in paying the **Trustee** any money, the **Trustee** may charge the **Trustee Lessee** daily interest on any late payments at the rate of one percent (1%) per month or any part of a month. All interest charged must be paid on demand.

3 RENT REVIEWS

3.1 CPI Review

Where **CPI Review Dates** are inserted in Item 3(a) of the Reference Schedule the **Rent** must be reviewed on each **CPI Review Date** to an amount represented by A where:

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

Where B = the **CPI** for the quarter ending immediately before the relevant **CPI review date**.

C = the **CPI** for the quarter one (1) year before the quarter in B; and

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- (a) allow the **Premises** to be used for annoying, offensive or illegal acts which cause annoyance, nuisance, grievance, damage or disturbance to the occupants of adjacent premises or to the **Trustee**
- (b) hold or permit to be held any auction or similar sale in the Premises
- (c) use any form of power other than gas or electric current or gas supplied through meters
- (d) overload the Services
- (e) damage the Trustee's Property
- (f) alter the Premises, install any partitions or equipment or do any building work
- (g) do anything that may invalidate the Trustee's insurance or increase the Trustee's premiums
- (h) display, paint or erect any signs, save standard business signage
- (i) knowingly use or allow the Trustee's Property to be used for any purpose other than those for which they were designed
- (j) interfere with any drains, water supply, gas, electrical, plumbing, airconditioning equipment or other services or any of the Trustee's Property
- (k) prepare or cook for sale or other commercial purpose any food on the **Premises** unless consistent with the **Permitted Use**
- (l) use any apparatus which radiates heat unless consistent with the **Permitted Use**
- (m) bring any heavy machinery, plant or equipment onto the Premises unless it is reasonably necessary for the **Permitted Use** and in any case must not overload the floors, walls or ceilings
- (n) make holes, deface or damage floors, walls or ceilings or other parts of the Premises
- (o) install any vending or amusement machines
- (p) use or install any product or property in the Premises likely to cause damage
- (q) use or permit to be used any of the elevators, escalators or travelators in the **Building** to carry any bulky goods or equipment unless they are designated by the **Trustee** for that purpose.

4.3 Consent

The **Trustee Lessee** may seek the **Trustee's** written consent to the matters in clause 4.2(b), 4.2(c), 4.2(f), 4.2(g) and 4.2(i) to 4.2(q) which can be granted at the **Trustee's** discretion.

4.4 Trustee Lessee's Obligation

The **Trustee Lessee** must:

- (a) obtain and maintain all permits or consents required from any government authority to carry on the **Permitted Use** in the **Premises**
- (b) immediately notify the **Trustee** of any damage to, defect or disrepair in the **Services** or the **Trustee's Property**
- (c) obey any rules made by the **Trustee** relating to the operation, safety, use, occupation and management of the **Building**

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- (d) immediately notify the **Trustee** of any infectious diseases notifiable to the relevant Health Authority occurring on the **Premises** of which it is aware
- (e) immediately provide the **Trustee** with copies of all notices, which it is required to serve on or receive pursuant to any legislation relating to the **Premises**
- (f) at the expiration or sooner determination of the **Term** return all keys of the **Premises** to the **Trustee**
- (g) lock all exterior doors and windows in the **Premises** when the **Premises** are not being used
- (h) pay all charges, assessments or impositions which may be levied in respect of the **Premises** during the **Term** and arising as a result of the use and occupation of the **Premises** by the **Trustee Lessee**.

5 MAINTENANCE AND REPAIR

5.1 Repair

The **Trustee Lessee** must:

- (a) keep the **Premises**, including all signage, in good repair and condition except for fair wear and tear, and structural defects and/or repairs
- (b) fix any damage caused by the **Trustee Lessee** or its employees use
- (c) repair, maintain or replace all glass in the **Premises**, the doors locks windows and window fittings, all broken, faulty or blown light tubes and associated electrical apparatus in the **Premises**
- (d) repair and maintain the **Air Conditioning Equipment** during the term of this **Trustee Lease** and maintain a contract with a reputable maintenance firm approved by the **Trustee** (such approval not to be unreasonably withheld) and provide the **Trustee** with a copy of the maintenance contract when requested by the **Trustee**
- (e) during the last year of the **Term**, and more often if reasonably required by the **Trustee** having regard to the condition of the **Premises**, paint the walls, ceilings and other painted surfaces of the interior of the **Premises** with two (2) coats of first quality paint in a proper and workmanlike manner, in the original colours or in such other colours approved by the **Trustee**
- (f) keep the **Premises** free from vermin
- (g) keep the **Services** in good repair and condition except for fair wear and tear.

5.2 Cleaning

The **Trustee Lessee** must:

- (a) keep the **Premises** clean and tidy, consistent with the nature of the business conducted on the **Premises**
- (b) keep the **Trustee Lessee's Property** clean and tidy
- (c) if the **Trustee** and **Trustee Lessee** agree to use a cleaning service supplied by the **Trustee** to the **Premises** the **Trustee Lessee** must pay to the **Trustee** on demand the reasonable cost of cleaning the **Premises**

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- (d) any cleaning of the **Premises** by a service supplied by the **Trustee** must be of a satisfactory commercial standard and the cleaners will be allowed access to the **Premises** at all reasonable times.

5.3 **Trustee's Right to Inspect and Repair**

- (1) Upon giving the **Trustee Lessee** two (2) days notice in writing, the **Trustee** may inspect or carry out repairs, maintenance, or building work in or around the **Premises** at any reasonable time. In an emergency, the **Trustee** may enter at any time without giving the **Trustee Lessee** notice.
- (2) The **Trustee** may carry out any of the **Trustee Lessee's** obligations under this Trustee Lease if the **Trustee Lessee** does not carry them out on time or as reasonably directed by the **Trustee**. If the **Trustee** does so, then the **Trustee Lessee** must pay the **Trustee's** expenses.

5.4 **Trustee Lessee's Works**

- (1) The **Trustee Lessee** must not carry out any building work without the **Trustee's** consent. The **Trustee** cannot unreasonably refuse to give its consent if:
- (a) the **Trustee** approves the **Trustee Lessee's** drawings and specifications for the works
 - (b) the **Trustee Lessee** and the **Trustee** agree on the type, quality, colour and size of the materials to be used
 - (c) the **Trustee** reasonably approves of the **Trustee Lessee's** builder.
- (2) The **Trustee Lessee** must:
- (a) pay for any work approved under clause 5.4(1)
 - (b) indemnify the **Trustee** against all injury or damage to the **Premises** caused by those works, and
 - (c) maintain the works.

5.5 **Trustee's Fitout**

If the **Trustee** has provided any fitout to the **Premises** then:

- (a) that fitout is **Trustee's** Property
- (b) the **Trustee Lessee** must not damage any fitout provided by the **Trustee** or install any additional fitout without the consent of the **Trustee** which must not be unreasonably withheld
- (c) if during the Term of this Trustee Lease or any renewed term, any fitout provided by the **Trustee** needs to be replaced because of fair wear and tear, then the **Trustee** will replace that fitout with fitout of a like quality
- (d) If during the Term of this Trustee Lease or any renewed term, the **Trustee Lessee** requires any fitout by the **Trustee** to be replaced for reason other than fair wear and tear, the **Trustee** or the **Trustee Lessee** with the **Trustee's** consent will replace that fitout at the cost of the **Trustee Lessee**.

6 **ASSIGNMENT AND SUBLETTING**

- 6.1 The **Trustee Lessee** may only charge or deal with the Trustee Lease or the **Premises** with the **Trustee's** consent which must not be unreasonably withheld.
- 6.2 The **Trustee** must consent to the **Trustee Lessee** dealing with its interest under this Trustee Lease in the manner referred to in clause 11 of the Mandatory Terms and clause 6.1 if:

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- (a) The **Trustee** is satisfied that the new tenant is suitable, respectable, responsible and financially secure and is capable of carrying out the **Trustee Lessee's** obligations under this Trustee Lease
- (b) The **Trustee Lessee** and the new tenant signs any agreement and gives any security which the **Trustee** reasonably requires
- (c) The **Trustee Lessee** complies with any other reasonable requirements of the **Trustee**
- (d) The **Trustee Lessee** is not in breach of the Trustee Lease
- (e) The **Trustee Lessee** pays the **Trustee's** reasonable costs and expenses of giving its consent including legal costs, stamp duty and registration fees.

6.3 If the **Trustee Lessee** is a corporation, any change in the shareholding or composition of the board of directors altering the effective control of the board is an assignment of this Trustee Lease and must be dealt with in accordance with this Trustee Lease unless it is a listed Public Company or a subsidiary of a listed Public Company.

7 LANDLORD'S RIGHTS AND OBLIGATIONS

7.1 Head Trustee Lease or Other Interests

The **Trustee Lessee** must allow any person having any estate or interest in the **Premises** superior to or concurrent with the **Trustee** to exercise the powers to enter and view the **Premises** and to carry out repairs renovations maintenance and other work and otherwise to exercise or perform their lawful rights or obligations.

7.2 Quiet Enjoyment

Provided the **Trustee Lessee** complies with the terms of this Trustee Lease the **Trustee Lessee** can peaceably hold and enjoy the **Premises** during the continuance of this Trustee Lease without any interruption by the **Trustee** or any other person lawfully claiming under the **Trustee**.

7.3 Insurance

The **Trustee** must insure the **Premises** (but excluding all additions to the **Premises** carried out by the **Trustee Lessee** and the **Trustee Lessee's Property**) for its full replacement value and unless the insurance becomes void or voidable through or by reason of some default by the **Trustee Lessee** keep it insured.

7.4 Rates and Taxes

The **Trustee** must pay all **Outgoings** not payable by the **Trustee Lessee**

7.5 Maintenance

- (1) The **Trustee** must maintain the structural integrity of the **Premises**.
- (2) Nothing in clause 7.5(1) makes the **Trustee** responsible for the maintenance or repair of the **Trustee Lessee's Property**.

7.6 Services

The **Trustee** must do everything reasonable to ensure the **Trustee** supplied fixtures, fittings and equipment operate efficiently during normal working hours but the **Trustee** is not liable if they do not.

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8 RISK

8.1 Own Risk

The **Trustee Lessee** occupies and uses the **Premises** at its own risk. The **Trustee Lessee** also carries out building work in the **Premises** at its own risk.

8.2 Release

The **Trustee Lessee** releases to the fullest extent permitted by Law, the **Trustee** and its agents, employees and contractors from all claims and demands resulting from any accident, damage, loss, injury or death occurring in the **Premises** or outside the **Premises** except to the extent that it is caused by a deliberate act, negligence or default by the **Trustee** or its agents, employees or contractors or from structural defects.

8.3 Insurance

(1) In addition to the insurance requirements under clause 14 of the Mandatory Terms, at all times during the continuance of this Trustee Lease, the **Trustee Lessee** must effect and keep current:

(a) a policy of insurance in the names of the **Trustee** and the **Trustee Lessee** for their respective interests to cover:

- (i) the full reinstatement replacement costs of plate glass in the **Premises**
- (ii) special industrial risks (if any) due to the specific **Permitted Use** of the **Premises** by the **Trustee Lessee** (if any)

with an insurance office or company approved by the **Trustee** (such consent not to be unreasonably withheld)

(b) worker's compensation including employer's liability insurance (unlimited cover).

(2) The **Trustee Lessee** when requested by the **Trustee** must give the **Trustee**:

- (a) a duplicate copy of each such policy immediately it is effected
- (b) a copy of the receipt issued for payment of each premium within five (5) business days of it being paid
- (c) a copy of the certificate of currency when requested.

8.4 Notice of Accident

The **Trustee Lessee** must give the **Trustee** prompt notice in writing of any accident in or want of repair to the **Premises** or defect in any **Services** which it is aware.

8.5 Conduct Voiding Insurance

The **Trustee Lessee** must not knowingly do or permit to be done or omit to do any act in the **Premises** which may render void or voidable any insurances on the **Premises** or that may cause the rate of premium on any such insurance policies to be increased or be liable to be increased and the **Trustee Lessee** must do or permit to be done immediately upon request by the **Trustee**, everything necessary to ensure the continuance of any insurances effected by the **Trustee**.

9 DEFAULT AND TERMINATION

9.1 Essential Terms

The essential terms are:

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- (a) Payments [clause 2.1]
- (b) Use of Premises [clause 4.1]
- (c) Conduct [clause 4.2]
- (d) Trustee Lessee's Obligations [clause 4.4]
- (e) Repair [clause 5.1]
- (f) Cleaning [clause 5.2]
- (g) Obtain consent before assignment, subletting, mortgaging or charging [clause 6.1].

9.2 Default

The **Trustee Lessee** is in default of this Trustee Lease if:

- (a) it breaches an essential term of this Trustee Lease
- (b) it repudiates its obligations under this Trustee Lease
- (c) it is insolvent
- (d) its interest under this Trustee Lease is attached or taken in execution under any legal process, or
- (e) it does not comply with any other term of this Trustee Lease within a reasonable time after receiving notice from the **Trustee** to do so.

9.3 Termination of Tenancy

- (1) Subject to clause 19 of the Mandatory Terms, if the **Trustee Lessee** is in default and does not remedy the default within the time stated in any notice from the **Trustee**, the **Trustee** may do any one or more of the following without prejudice to any other right which it may have against the **Trustee Lessee**:
 - (a) by notice to the **Trustee Lessee**, terminate the Trustee Lease and take possession of the **Premises**
 - (b) recover from the **Trustee Lessee** any loss suffered by the **Trustee** due to default of the **Trustee Lessee**
 - (c) exercise any of its other legal rights.
- (2) The **Trustee** must take reasonable steps to mitigate its loss.

10 EXPIRY OF TERM

10.1 Clause 10 is to be read in addition to clauses 18 and 20 of the Mandatory Terms.

10.2 On expiry of the **Term** or earlier termination the **Trustee Lessee** must:

- (a) vacate the **Premises** in good repair and clean condition, fair wear and tear being acceptable;
- (b) return all keys, security passes and cards held by the **Trustee Lessee** or its employees; and
- (c) if required by the **Trustee** paint the **Premises** with two coats of first quality paint in a workmanlike manner in colours approved in writing by the **Trustee**.

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10.3 Upon the earlier of:

- (a) one month prior to the **Expiry Date**;
- (b) one month prior to an **Early Termination Date** if a notice has been given in respect of that date by the **Trustee Lessee** under clause 13; or
- (c) two months after termination of the **Trustee Lease** under clause 9,

the **Trustee** may give the **Trustee Lessee** written notice:

- (d) that the **Trustee Lessee** must remove part of all of the **Trustee Lessee's Property** from the **Premises** by a date specified in notice ("**Trustee Lessee's Removal Notice**");
- (e) that the **Trustee** elects to remove part or all of the **Trustee Lessee's Property** from the **Premises** (**Trustee's Removal Notice**"); or
- (f) that the **Trustee** elects to purchase some or all of the **Trustee Lessee's Property** ("**Trustee's Purchase Notice**").

10.4 Upon expiry of the **Term** or earlier termination and if a notice has not been given by the **Trustee** under clause 10.3, the **Trustee Lessee** must:

- (a) remove all the **Trustee Lessee's Property** from the **Premises**;
- (b) repair any damage caused by the **Trustee Lessee's** removal of the **Trustee Lessee's Property**;
- (c) reinstate the **Premises** to their original layout.

10.5 If the **Trustee** gives the **Trustee Lessee** a **Trustee Lessee's Removal Notice**, the **Trustee Lessee** must by the date specified in the notice:

- (a) remove all the **Trustee Lessee's Property** from the **Premises**;
- (b) repair any damage caused by the **Trustee Lessee's** removal of the **Trustee Lessee's Property**;
- (c) reinstate the **Premises** to their original layout.

10.6 (1) If the **Trustee** gives the **Trustee Lessee** a **Trustee's Removal Notice**, the **Trustee** must within a reasonable time:

- (a) remove from the **Premises** and store all the **Trustee Lessee's Property**;

- (b) repair any damage; and

may at the **Trustee's** discretion reinstate the **Premises** to their original layout.

(2) The **Trustee Lessee** must pay the **Trustee's** expenses in doing the things set out in clause 10.6(1).

(3) Subject to the **Trustee Lessee** paying the **Trustee's** expenses, the **Trustee** must allow the **Trustee Lessee** to collect the **Trustee Lessee's Property** from a place nominated by the **Trustee** during ordinary business hours and by a date nominated by the **Trustee**.

10.7 (1) If the **Trustee** gives the **Trustee Lessee** a **Trustee's Purchase Notice**, the notice must:

- (a) describe the part (or whole) of the **Trustee Lessee's Property** to which the notice applies ("**Sale Property**");

- (b) the price the **Trustee** offers to pay for the **Sale Property**.

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- (2) The **Trustee Lessee** must within 14 days of receiving the Trustee's Purchase Notice advise the **Trustee** in writing whether the **Trustee Lessee** accepts the price stated in the Trustee's Purchase Notice.
- (3) If the **Trustee Lessee** does not:
- (a) accept the price stated in the Trustee's Purchase Notice; or
 - (b) give the **Trustee** written notice under clause 10.7(2),
- then the **Trustee** may appoint an independent valuer to determine the market value of the Sale Property which shall be the purchase price payable by the **Trustee** to the **Trustee Lessee** for the Sale Property.
- (4) The valuer shall determine market value assuming the Sale Property is intended to be auctioned after removal from the **Premises** and a reasonable period of advertising the auction.
- (5) The **Trustee** must pay the **Trustee Lessee** the purchase price agreed by the **Trustee Lessee** or determined by the valuer, as the case may be, within 14 days of agreement or determination by the valuer.
- (6) The **Trustee** may reduce the amount payable to the **Trustee Lessee** under clause 10.7(5) by any amount owed by the **Trustee Lessee** to the **Trustee** under the **Trustee Lease**. The rights of set off in this clause are in addition to and without prejudice to any right which the **Trustee** may have to recover such amounts in another way.
- 10.8 If the **Trustee Lessee** does not remove the **Trustee Lessee's Property**:
- (a) in accordance with clause 10.4;
 - (b) in accordance with clause 10.5 if a **Trustee Lessee's Removal Notice** is given; or
 - (c) by the date nominated under clause 10.6(3),
- the **Trustee** may:
- (d) remove and store the **Trustee Lessee's Property** at the **Trustee Lessee's** risk and expense; or
 - (e) treat the **Trustee Lessee's Property** as being abandoned, in which case title in the **Trustee Lessee's Property** passes to the **Trustee** who may deal with it as it thinks fit without being liable to account to the **Trustee Lessee**.
- 10.9 Any right of the **Trustee Lessee** to remove any property after the termination of or expiry of this **Trustee Lease** shall be subject to the **Trustee Lessee's** indemnity and insurance obligations contained in clause 8 of this **Trustee Lease**. Notwithstanding that the **Trustee Lease** may have been terminated or has expired, the **Trustee Lessee's** obligations in respect of clause 8 shall continue with respect to the removal of any property from the **Premises**.

11 DAMAGE AND DESTRUCTION

11.1 Rent Reduction

If the **Premises** are damaged or destroyed and the **Trustee Lessee** or its employees have not caused or contributed to such damage or destruction and as a result the **Premises** are wholly or partially unfit for use or the **Trustee Lessee** cannot gain access to the **Premises** then from the date that the **Trustee Lessee** notifies the **Trustee** of the damage or destruction until the date that the **Premises** are again fit for use and accessible the **Trustee**:

- (a) must reduce the **Rent, Agreed Proportion of Outgoings** and any other money payable to the **Trustee** by a reasonable amount depending on the type and extent of damage or destruction, and

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- (b) cannot require the **Trustee Lessee** to clean, repair or maintain until the **Premises** are fit for use and accessible.

11.2 Trustee Lessee May Terminate

The **Trustee Lessee** may terminate this Trustee Lease by thirty (30) days notice to the **Trustee** unless:

- (a) within three (3) months of the event causing damage or destruction, the **Trustee** notifies the **Trustee Lessee** that the **Premises** will be reinstated, and
- (b) carries out reinstatement works within a reasonable time having regard to the extent of the damage.

11.3 Trustee May Terminate

If the **Trustee** considers the damage to the **Premises** renders it impractical or undesirable to reinstate the **Premises**, it may terminate this Trustee Lease by giving to the **Trustee Lessee** notice in writing.

11.4 No Obligation to Rebuild

The **Trustee** is not obliged to restore the **Premises** according to the former specifications so long as the layout and dimensions of the **Premises** and any building thereon and **Services** are not substantially different.

11.5 Dispute Resolution

- (1) The **Trustee Lessee** is entitled to dispute the reasonableness of any reduction of rent and other moneys
- (2) Any dispute as to the extent and reasonableness of any reduction in rent and other moneys must be determined by an independent **Valuer** appointed by the president of the **API** at the request of either party
- (3) In making the determination, the appointed **Valuer** acts as an expert and the determination is final and binding on both parties
- (4) The cost of the determination must be paid by the parties equally unless otherwise decided by the appointed **Valuer**.

11.6 Antecedent Rights

Termination under clause 11 or any other provision of this Trustee Lease does not affect either parties' accrued rights before termination.

12 GENERAL

12.1 Naming Rights

The **Trustee** may name or rename the **Building** or **Premises**.

12.2 Trustee May Rectify

If the **Trustee Lessee** does not perform any obligation under this Trustee Lease the **Trustee** may perform that obligation as agent of the **Trustee Lessee** and the full cost to the **Trustee** of performing that obligation is payable by the **Trustee Lessee** to the **Trustee** on demand.

12.3 Notices to Trustee Lessee

To be valid or effective a notice by the **Trustee** to the **Trustee Lessee** must be in writing and be either:

Title Reference

- (a) given to the **Trustee Lessee** personally;
- (b) left at the **Premises**;
- (c) sent to the **Trustee Lessee's** facsimile number;
- (d) posted to the **Trustee Lessee's** last known registered office, place of business or residence; or
- (e) left, posted or sent by facsimile to the **Trustee Lessee's** address set out in Item 8 of the Reference Schedule.

12.4 Notices to Trustee

To be valid or effective a notice by the **Trustee Lessee** to the **Trustee** must be in writing and be either left, posted or sent by facsimile to the **Trustee's** address set out in Item 7 of the Reference Schedule or such other address as notified in writing by the **Trustee** to the **Trustee Lessee**.

12.5 Waiver Negatived

Failure by the **Trustee** or **Trustee Lessee** to exercise any power or right under this Trustee Lease can not be such to be construed or deemed a waiver of the relevant power or right unless it is in writing.

12.6 Entire Agreement

This Trustee Lease:

- (a) contains the entire agreement and understanding between the parties on everything connected with the subject matter of this Trustee Lease, and
- (b) supersedes any prior agreement or understanding on anything connected with that subject matter.

12.7 Severability

If any provision of this Trustee Lease or its application to any person or circumstance is or becomes unenforceable, illegal or void the remaining covenants are not affected and each covenant of this Trustee Lease is enforceable to the greatest extent permitted by Law.

12.8 Obligations of Parties

The respective covenants and obligations of the parties as set out in this Trustee Lease whether positive or negative must be construed as if each such obligation or covenant is a separate and independent covenant made by one party in favour of the other party and continuing (unless the context otherwise requires) throughout the **Term** and for so long as it remains to be performed.

12.9 Statutes and Regulations

Reference to statutes regulations ordinances or by-laws are deemed to extend to all statutes regulations ordinances or by-laws amending consolidating or replacing the same.

12.10 Governing Law

This Trustee Lease must be governed by and construed in accordance with the law of the State of Queensland.

12.11 Saturdays, Sundays and Public Holidays

If under this Trustee Lease the day on or by which any act, matter or thing must to be done is a Saturday, Sunday or a public holiday that act matter or thing must be done on the next succeeding day which is not a Saturday, Sunday or Public holiday.

Title Reference

13 EARLY TERMINATION

13.1 Exercise of Early Termination

- (1) If **Early Termination Dates** have been inserted in Item 9 of the Reference Schedule the **Trustee Lessee** may by written notice to the **Trustee** not less than 3 months before the **Early Termination Date** terminate the **Trustee Lease**.
- (2) If the **Trustee Lessee** terminates this **Trustee Lease** in accordance with clause 13.1(1), the **Trustee Lessee** must comply with clause 10.

14 PUBLIC USE OF TOILETS

- 14.1 The **Trustee Lessee** must make all toilets provided for public use available to the public on all occasions when organised activities are taking place on the said land. The **Trustee Lessee** must ensure that the toilets are at all times properly equipped and stocked with toilet paper, soap and hand towels as determined by the **Trustee**.

15 INDUSTRIAL BINS

- 15.1 The **Trustee Lessee** must provide industrial bins for litter of a size and number determined by the **Trustee** from time to time.

16 PROHIBITION ON SALE OF DRINKS & FOODSTUFFS

- 16.1 The **Trustee Lessee** must not sell nor permit any drinks or foodstuffs to be sold in glass containers and shall ensure that all such drinks are sold in cartons or cans and all such foodstuffs are sold in paper bags, cardboard cartons or polystyrene containers.

17 LOCAL AUTHORITY'S POWER UNFETTERED

- 17.1 Nothing in this **Trustee Lease** operates to restrict or otherwise affect the unfettered discretion of Rockhampton Regional Council in exercising its powers as a public authority under any relevant laws in relation to the subject matter of this **Trustee Lease** or otherwise.

18 BANK GUARANTEE

- 18.1 If a **Bank Guarantee** has been inserted in Item 10 of the Reference Schedule the **Trustee Lessee** must deliver the **Trustee** before the **Date of Commencement** the **Bank Guarantee**.
- 18.2 If the **Trustee Lessee** does not comply with any of its obligations under this **Trustee Lease**, the **Trustee** may call on the **Bank Guarantee**.
- 18.3 If the **Trustee** makes demand on the **Bank Guarantee** the **Trustee Lessee** must provide a replacement **Bank Guarantee** equal to the amount claimed by the **Trustee**.
- 18.4 The **Trustee** must return the **Bank Guarantee** to the **Trustee Lessee** within 2 months of expiration of the **Term** unless:
- (a) the **Trustee** has started proceedings against the **Trustee Lessee**, or
 - (b) the **Trustee Lessee** is holding over with the **Trustee's** consent.

19 GOODS AND SERVICES TAX

19.1 GST Definitions:

For the purposes of this clause 19:
"GST" means GST within the meaning of the GST Act.

Title Reference

"GST Act" means the A New Tax System (Goods and Services Tax) Act 1999 (as amended).
Where words and expressions used in this clause 19 are defined in the GST Act they shall have the same meaning as those words and expressions in the GST Act.

19.2 Amounts otherwise payable do not include GST

Except where express provision is made to the contrary, and subject to this clause 19, the consideration payable by any party under this lease represents the value of any taxable supply for which payment is to be made.

19.3 Liability to pay GST

Subject to clause 19.5, if a party makes a taxable supply in connection with this lease for a consideration, which, under clause 19.2 or clause 19.3, represents its value, then the party liable to pay for the taxable supply must also pay, at the same time and in the same manner as the value is otherwise payable, the amount of any GST payable in respect of the taxable supply.

19.4 Reimbursements

If this lease requires the **Trustee Lessee** to pay, reimburse or contribute to an amount paid or payable by the **Trustee** in respect of an acquisition from a third party for which the **Trustee** is entitled to claim an input tax credit, the amount required to be paid, reimbursed or contributed by the **Trustee Lessee** will be the value of the acquisition by the **Trustee** plus, if the **Trustee's** recovery from the **Trustee Lessee** is a taxable supply, any GST payable under clause 19.3.

19.5 Tax invoice

A party who has a right to payment under clause 19.3 must give the party liable to pay for the taxable supply a valid tax invoice in accordance with the GST Act.

20 GUARANTOR

20.1 Liability of Guarantor

- (a) The **Trustee** has entered into the Trustee Lease with the **Trustee Lessee** at the request of the **Guarantor** named in Item 11.
- (b) The **Guarantor** agrees that the **Guarantor** is liable to the **Trustee** if the **Trustee Lessee** breaches the Trustee Lease and will pay the **Trustee** any money for the **Trustee's** loss due to the breach.
- (c) The **Guarantor** indemnifies the **Trustee** against any liability or loss arising from, and any costs, charges or expenses incurred in connection with a breach by the **Trustee Lessee** of the Trustee Lease, as a separate undertaking.

20.2 Extent of Liability

The **Guarantor** is liable even –

- If the **Trustee** does not sue the **Trustee Lessee**
- If the Trustee Lease is varied
- If the Trustee Lease is unregistered, or –
- After the Trustee Lease ends, for any breach that occurred before the Trustee Lease ended or arose out of the Trustee Lease ending.

20.3 Guarantor must sign

If **Guarantors** are inserted in Item 11 of the Reference Schedule this Trustee Lease is not binding on the **Trustee** until each person named as a **Guarantor** in Item 11 of the Reference Schedule has signed this document as **Guarantor**.

SCHEDULE

Title Reference

Signed sealed and delivered by)

in the presence of:)

.....

.....
Witness

Title Reference
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