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SCHEDULE 1

SCHEDULE 2 - RENT REVIEW

SCHEDULE 3 - FURTHER OBLIGATIONS

THIS LEASE is made on

2004

BETWEEN **ALPINE RESORT MANAGEMENT BOARD** whose name and address appears in Item 1 (**Landlord**)

AND [] whose name and address appears in Item 2 (**Tenant**)

RECITALS

- A** The Land is reserved pursuant to Section 4 of the Crown Land (Reserves) Act 1978.
- B** Pursuant to the Alpine Resorts (Management) Act 1997 the Landlord is appointed as the Committee of Management of the Land and has power to enter into this Lease pursuant to the Alpine Resorts (Management) Act 1997 subject to the approval in writing of the Minister.
- C** The Landlord has agreed to lease the Land to the Tenant pursuant to the Alpine Resorts (Management) Act 1997 subject to the conditions, covenants, reservations, restrictions and exceptions and at the Rent set out in this Lease.

OPERATIVE PROVISIONS

1 PART 1 – DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this document:

Act means the Alpine Resorts (Management) Act 1997;

Alpine Resort means the alpine resort named in Item 3;

Authority includes any government, local government, statutory, public or other Person, authority, instrumentality or body having jurisdiction over the Land, the Premises or any part of it or anything in relation to it;

Building Standards Report means the report to be prepared by the Landlord under Clause 12 specifying whether the Premises meet the Standards of Occupancy;

Business Day means any day (except a Saturday, Sunday or public holiday) on which banks are open for business in Melbourne, Victoria;

Claim includes any claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding and right of action;

Clause means a clause of this Lease; ("sub-clause" has a similar meaning); a reference to a Clause followed by a number refers to the relevant Clause in this Lease;

Commencement Date means the date set out in Item 5;

Cost includes any cost, charge, expense, outgoing, payment or other expenditure of any nature whatever;

CPI Review means a review in accordance with Part B of Schedule 2;

Crown means the Crown in right of the State of Victoria;

Default Rate means the rate for the time being fixed under section 2 of the Penalty Interest Rates Act 1983; if that rate ceases to be published then it means any rate substituted in its place;

Further Obligations means any obligations set out in Schedule 3;

Further Term means the further term or terms set out in Item 9;

General Repairing Obligation means the obligation set out in Clause 11.1;

GST means any consumption, goods and services or value added tax, by whatever name called, imposed, levied or collected by any Federal or State Government which operates at any time or times during the Term or any renewal or overholding of the Lease including, without limitation, GST as defined in the GST Act and any replacement tax;

GST Act means A New System (Goods and Services Tax) Act 1999;

Hazardous Materials includes any substance, material, thing, component or element which is hazardous, a contaminant or a pollutant to persons or property;

Headworks Charge means the charge levied by the Landlord for the installation of any of the Landlord's Services or for the installation of any other works, services or infrastructure for the benefit of the Premises or the Alpine Resort including capital payments and development levies and being the amount set out in Item 13;

Insured Sum means the amount set out in Item 12;

Item means the relevant item in Schedule 1 to this Lease;

Land means the land described in Item 4 to a depth of 15 metres below the surface and all rights, easements and appurtenances usually and normally enjoyed with that land but does not include the Landlord's Services located on the Land;

Landlord means the Landlord named in this Lease and includes the person entitled, from time to time, to the reversion interest in the Land.

Landlord's Agents means the employees, contractors, agents and any other Person appointed from time to time by the Landlord as agent of the Landlord;

Landlord's Services means all Services installed on the Land by the Landlord other than the Tenant's Services;

Law includes any requirement of any statute, rule, regulation, proclamation, ordinance or local law, present or future, and whether State, Federal or otherwise;

Market Review means a review in accordance with Part A of Schedule 2;

Minister means the Minister having responsibility for the administration of the Act or such other Minister of the Crown or Authority to whom responsibility for this Lease may at any time be given;

Name and Notice Address means the name and address in Item 11 as it may be changed from time to time;

Negotiation Notice means the notice given by the Tenant under Clause 19.1;

Notice means any written notice or other written communication;

Party means a party to this Lease and includes any Guarantor;

Permitted Use means the permitted use of the Land set out in Item 8;

Person includes any Corporation and vice versa;

Premises means the Land and the Tenant's Improvements;

Rates and Taxes means all existing and future rates (including any special rates or levies) taxes, duties, charges, assessments, impositions and outgoings whatsoever now or at any time properly imposed, charged or assessed on or against the Land or the Landlord or the Tenant or payable by the owner or occupier of the Land;

Rent means the annual Rent set out in Item 7 as reviewed under Clause 4.3;

Requirement includes any lawful Notice, order or direction received from or given by any Authority or pursuant to any Law, in writing or otherwise, and notwithstanding to whom such Requirement is addressed or directed but if not addressed to the Tenant then the Tenant must be given a copy;

Review Date means the date or dates set out in Item 10;

Services means all services available to the Resort including, without limitation, gas, electricity, telephone and telecommunications, data transmission, water, sewerage and drainage;

Service Charge means an amount payable to the Landlord under the Act;

Snow Season has the same meaning as in the Alpine Resorts (Management) Regulations 1998;

Standard of Occupancy means a standard determined by the Landlord, acting reasonably, for the Tenant's Improvements taking into account, without limitation:

- (a) contemporary standards; and
- (b) the need for regular maintenance and upgrading of the exterior and interior of the Tenant's Improvements to meet visitor expectations;

Supply means the supply of any good, service or thing by either Party under this Lease;

Tenant means the Tenant named in this Lease and includes in the case of a:

- (a) Corporation the Tenant, its successors and permitted assigns;
- (b) natural Person the Tenant, his executors, administrators and permitted assigns;

Tenant's Agents means each of the Tenant's employees, agents, contractors, invitees or others (whether with or without invitation), sublessees, licensees, franchisees and concessionaires or others (whether expressly or impliedly) who may at any time be in or upon the Land;

Tenant's Improvements means the Tenant's Services and all buildings, structures, fixtures, fittings, plant, equipment, partitions, signs or other material or articles and chattels of all kinds which are erected on the Land on the Commencement Date, (other than any signs erected by the Landlord) or are at any time erected or installed by the Tenant in or on the Land;

Tenant's Services means:

- (a) all Services installed on the Land by the Tenant; and
- (b) any other Services from the point of metering of those Services to the Premises;

Tenant's Proposal means the proposal to be given by the Tenant to the Landlord under Clause 19.3;

Term means the term of this Lease set out in Item 6 commencing from and including the Commencement Date;

this Lease or "the Lease" means this lease and includes all schedules, appendices, attachments, plans and specifications, annexures and exhibits to it; and

Works means the construction, alteration, addition, renovation, demolition, removal of or to the Premises;

1.2 Interpretation

- (a) The singular includes the plural and vice versa;
- (b) A gender includes all genders;
- (c) An obligation imposed by this Lease on more than one Person binds them jointly and severally;
- (d) Every covenant by the Tenant includes a covenant by the Tenant to procure compliance with the covenant by each of the Tenant's Agents;
- (e) A reference to legislation includes a modification or re-enactment of it, a legislative provision substituted for it or amendment of it and a regulation, rule or statutory instrument issued under it;
- (f) This Lease must be interpreted so that it complies with all Laws applicable in Victoria. Any provision must be read down so as to give it as much effect as possible. If it is not possible to give a provision any effect at all, then it must be severed from the rest of the Lease. If any provision or part of it cannot be so read down, such provision or part shall be deemed to be void and severable and the remaining provisions of this Lease shall not in any way be affected or impaired;

- (g) Unless otherwise stated, a provision of this Lease does not limit the effect of any other provision of this Lease. "Including" and similar expressions are not and must not be treated as words of limitation;
- (h) A reference to the Land, Premises or any thing includes the whole and each part of it;
- (i) The Landlord and the Tenant agree that:
 - (i) the terms contained in this Lease constitute the whole of the agreement in respect of the Land and Premises between the Landlord and the Tenant and all previous negotiations and agreements are negated;
 - (ii) no further terms are to be implied or arise between the Landlord and the Tenant by way of collateral or other agreement made by or on behalf of the Landlord or by or on behalf of the Tenant on or before or after the execution of this Lease, and any implication or collateral or other agreement is excluded and negated;
 - (iii) no information, representation or warranty by the Landlord or the Landlord's agents was supplied or made with the intention or knowledge that it would be relied on by the Tenant in entering into this Lease; and
 - (iv) no information, representation or warranty has been relied on by the Tenant in entering into this Lease.
- (j) Headings and the index to this Lease are for guidance only and do not affect the interpretation of this Lease;
- (k) If a reference is made to any Person, body or Authority and that person, body or Authority has ceased to exist, then the reference is deemed to be a reference to the Person, body or Authority that then serves substantially the same or equivalent objects as the Person, body or Authority that has ceased to exist;
- (l) Reference to the President of a Person, body or Authority must, in the absence of a President, be read as a reference to the senior officer or equivalent employee for the time being of the Person, body or Authority or such other Person fulfilling the duties of President;
- (m) A reference to "writing" or "written" and any words of similar import include printing, typing, lithography and any other means of reproducing characters in tangible and visible form, including any communication effected through any electronic medium if such communication is subsequently capable of reproduction in tangible or visible form;
- (n) A reference to "Corporation" and any other words or expressions used or defined in the Corporations Act, unless the context otherwise requires, has the same meaning that is given to them in the Corporations Act;
- (o) This Lease is governed by Victorian law. The Parties irrevocably submit to the non-exclusive jurisdiction of the courts of that State and courts of appeal from them. Except as expressly agreed in writing by both Parties or for an action required at a federal level, each Party waives any right it has to object to an action

being brought in any court outside Victoria including, without limitation, by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction;

- (p) If the day or last day for doing anything or on which an entitlement is due to arise is not a Business Day, the day or last day for doing the thing or date on which the entitlement arises for the purposes of this Lease shall be the next Business Day;
- (q) Each provision of this Lease continues to have full force and effect until it is satisfied or completed;
- (r) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning; and
- (s) A reference to an agreement or a document is to that agreement or document as amended, novated, supplemented, varied or replaced from time to time except to the extent prohibited by this Lease.

2 PART 2 - EXCLUSION OF STATUTORY PROVISIONS

2.1 Moratorium

To the extent permitted by law, the application to this Lease or to any Party of any Law or any Requirement or any moratorium having the effect of extending or reducing the Term, reducing or postponing the payment of Rent or any part of it or otherwise affecting the operation of the terms of this Lease or its application to any Party is excluded and negated.

2.2 Exclusion of Statutory Provisions

The covenants, powers and provisions implied in leases by virtue of the Transfer of Land Act 1958 are expressly negated.

3 PART 3 - LEASE OF LAND

3.1 Lease of Land for Term

The Landlord leases the Land to the Tenant for the Term.

3.2 Landlord's Reservations

The Landlord reserves the right for the Landlord and the Landlord's Agents to:

- (a) carry out any works that may be required to comply with any applicable Law or Requirement which are not the responsibility of the Tenant or which are the responsibility of the Tenant but with which the Tenant fails to comply;
- (b) enter the Land for the purposes of maintenance, use, repair or replacement of any Landlord's Services and to create any easement or other right over the Land for the Landlord's Services or any other thing as long as it does not adversely affect the Tenant's rights under this Lease;
- (c) enter the Land and the Premises for the purposes set out in this Clause; and

- (d) all water naturally on the Land including, in the case of any springs, soaks or underground streams, the banks and beds of such springs, soaks or underground stream.

3.3 Other Reservations

This Lease is granted subject to the following reservations:

- (a) the reservation to the Crown of all gold and minerals within the meaning of the Mineral Resources Development Act 1990 and petroleum within the meaning of the Petroleum Act 1998, all of which are described as the "reserved minerals";
- (b) the reservation to the Crown of the rights of access for the purpose of searching for and obtaining the reserved minerals in any part of the Land;
- (c) the reservation to the Crown of the rights of access for any pipeline works and other purposes necessary for obtaining and conveying on and from the Land any of the reserved minerals obtained in any part of the Land; and
- (d) the right to resume the Land for mining purposes under Section 205 of the Land Act 1958.

3.4 Landlord's Exercise of Rights

Except in an emergency, the Landlord must give the Tenant reasonable Notice of the Landlord's intended exercise of the rights set out in Clauses 3.2 and 3.3. The Landlord must only exercise the rights at reasonable times and must minimise interference to the Tenant when doing so.

3.5 Ownership of Tenant's Improvements

The Tenant owns the Tenant's Improvements which must be dealt with at the end of the Lease in accordance with Clause 21.

4 PART 4 - RENT

4.1 Tenant to pay Rent

The Tenant covenants to pay the Rent:

- (a) at the times and in the manner set out in Item 7 without demand by the Landlord;
- (b) without any abatement, deduction or right of set-off; and
- (c) to the Landlord at the address set out in this Lease or to any other address or in any other way the Landlord directs the Tenant by Notice.

4.2 Apportionment of Rent

If the Commencement Date is not the first day of a rent period, the first and last instalments of Rent will be apportioned on a pro-rata daily basis for the periods from:

- (a) the Commencement Date to the first day of the next rent period;

- (b) the first day of the last rent period of the Term until the date on which the Term expires.

4.3 Review of Rent

The Rent will be reviewed on each Review Date in accordance with the method set out in Item 10 and in accordance with Schedule 2.

5 PART 5 - RATES AND TAXES, GST AND OTHER CHARGES

5.1 Tenant to pay Rates and Taxes

The Tenant must pay the Rates and Taxes:

- (a) to the assessing Authority on time if assessed directly against the Tenant or the Land and/or the Tenant's Improvements; but otherwise
- (b) to the Landlord by the due date for payment if the Landlord must pay the Rates and Taxes.

5.2 Tenant to Produce Receipts

If required by the Landlord the Tenant must produce receipts to the Landlord evidencing payment of the Rates and Taxes by the due date for payment if the Tenant is required to pay them to the assessing Authority.

5.3 Pro-rata apportionment

If necessary, the Rates and Taxes will be apportioned on a pro-rata daily basis at the beginning and at the end of the Term.

5.4 Goods and Services Tax

- (a) If GST is or will be or is purported to be payable on any Supply the Party receiving the Supply must pay the Party making the Supply a sum equal to any GST payable by the supplier for that Supply.
- (b) To the extent that one Party is required to reimburse the other Party for costs incurred by the other Party, those costs do not include any amount in respect of GST for which the Party is entitled to claim an input tax credit.
- (c) A Party's obligation to pay an amount under this clause is subject to a valid tax invoice being delivered to that Party. For the avoidance of any doubt, the Rent and all other payments under this Lease are expressed as exclusive of GST.

5.5 Service Charge

The Tenant must pay the Service Charge to the Landlord at the times and in the manner required by the Landlord.

5.6 Headworks Charge

The Tenant must pay to the Landlord the Capital Ingoings Charge at the time and in the manner required by the Landlord.

6 PART 6 - COST OF SERVICES

The Tenant must pay Costs for all Tenant's Services (including any special, additional or unusual Services separately supplied, metered, consumed or connected as appropriate in, to or on the Land or the Premises) by the due date for payment.

7 PART 7 - COSTS

The Tenant must pay to the Landlord all the Landlord's reasonable legal and other Costs incurred by the Landlord including the Costs of valuers, surveyors for plan and survey of the Land and other consultants engaged for and incidental to:

- (a) valuation advice received by the Landlord for the purposes of Clause 1 of Part A of Schedule 2
- (b) the negotiation, preparation and execution of this Lease;
- (c) any consent required under this Lease;
- (d) any assignment or subletting for which the Landlord's consent is required by this Lease;
- (e) any variation, extension, surrender or termination of this Lease otherwise than by effluxion of time; and
- (f) any default by the Tenant or the Tenant's Agents in observing or performing any covenants contained or implied in this Lease.

8 PART 8 - INTEREST

8.1 Payment

The Tenant must pay on demand interest at the Default Rate on any Rent or other moneys which the Tenant has not paid on the due date for payment.

8.2 Calculation

Interest is to be calculated daily from the due date and is to continue until the overdue money is paid. The interest will be capitalised on the last day of each month and may be recovered in the same way as Rent in arrears.

8.3 No Prejudice

If the Landlord requires a Tenant to pay interest, it is without prejudice to any other rights, powers and remedies which the Landlord may have under this Lease or at law.

9 PART 9 - USE OF PREMISES

9.1 Tenant's Permitted Use and negative covenants

The Tenant must not:

- (a) use the Premises for any purpose other than the Permitted Use;

- (b) do anything in or on the Premises which in the reasonable opinion of the Landlord causes or may cause nuisance, damage, disturbance or danger to the Landlord or the occupiers or owners of any other property;
- (c) use or allow the use of any radio, television or other sound producing equipment at a volume that can be heard outside the Premises;
- (d) affix any television or radio mast or antennae, satellite dish or any other communication device to any part of the Premises without the consent of the Landlord;
- (e) write, paint, display, hang or affix any sign, advertisement, placard, name, flagpole, flag or notice on any part of the Premises except with the prior written consent of the Landlord which is not to be unreasonably withheld but may be given conditionally and may be revoked after it has been given at the absolute discretion of the Landlord;
- (f) erect any permanent or temporary barriers or fences on the Land without the prior written consent of the Landlord;
- (g) except to the extent that they are necessary for the Permitted Use and then only in compliance with any Law or Requirement and in such quantities as are reasonably appropriate, store Hazardous Materials on or in the Premises;
- (h) install any equipment or system in the Premises that overloads or may overload the electrical or other Services to the Premises;
- (i) unreasonably refuse or permit temporary shelter on the Premises to any injured person or person in an emergency or in the case of adverse weather conditions;
- (j) introduce or allow to be introduced any seed, cutting, plant, root bulb or other form of vegetation or plant of a species not indigenous to the Alpine Resort;
- (k) permit car parking to occur on the Land other than in areas designated for car parking;
- (l) use the Premises for an illegal purpose;
- (m) burn any rubbish or waste on the Land or the Premises without the consent of the Landlord.

9.2 Tenant's positive covenants

The Tenant at its Cost must:

- (a) promptly and in accordance with all Laws remedy any damage caused by the Tenant or the Tenant's Agents to the Premises or the Alpine Resort by the spillage of any Hazardous Material;
- (b) keep the Premises clean and not permit any accumulation of rubbish or materials not required for Works consented to by the Landlord in accordance with Clause 11.6 in the Premises;

- (c) provide the Landlord (and keep updated when it changes) within 30 days of the Commencement Date and 7 days of any change with the name, postal address, e-mail address, telephone and facsimile transmission numbers of a person or persons to contact during and after business hours if an emergency arises which affects the Premises;
- (d) comply with the Landlord's reasonable operational requirements for the Services and not interfere with the Services;
- (e) on vacating the Premises, remove all lettering, signs, flagpoles, flags, and other distinctive marks from any improvements on the Premises and make good any damage caused by the removal;
- (f) obtain, maintain and comply with all consents or approvals from all Authorities which from time to time are necessary or appropriate for the Permitted Use. The Tenant must not by any act or omission cause or permit any consent or approval to lapse or be revoked;
- (g) ensure that all tanks on the Land are installed and screened or sited in a manner reasonably required by the Landlord and all relevant Authorities and must remove any tanks situated on the Premises that become redundant;
- (h) if a notifiable infectious illness occurs in the Premises promptly give Notice to the Landlord and all relevant Authorities as soon as becoming aware of the same and thoroughly fumigate and disinfect the Premises to the satisfaction of the Landlord and all relevant Authorities;
- (i) undertake all fire protection works on the Premises required by Law to the satisfaction of the Landlord and all relevant Authorities;
- (j) provide to the Premises and properly maintain fire fighting and fire extinguishing appliances;
- (k) permit the Landlord or the Landlord's servants or agents with or without vehicles and equipment, workmen or others at all times to enter the Premises for fire protection and suppression purposes;
- (l) comply with and ensure that the Tenant's Agents comply with the reasonable directions of the Landlord and the Landlord's Agents in relation to the movement of vehicles in, out or around the Land and the standing of vehicles on the Land;
- (m) allow the public to have access (other than by vehicles) to all parts of the Premises (other than the Tenant's Improvements which are not provided for the purposes of ingress and egress to the Land or Premises) for the purpose of access across the Premises except if such access prevents the Tenant providing reasonable protection to the Tenant's Improvements or prevents the Tenant ensuring the safety and good behaviour of people using the Tenant's Improvements;
- (n) keep the Land free of pest plants and pest animals to the reasonable satisfaction of the Landlord;

- (o) remedy any erosion on the Land caused by its use or any works it does on the Land and revegetate any disturbed land to the reasonable satisfaction and within the reasonable time limit required by the Landlord;
- (p) vegetate and undertake such other works as the Landlord may require, to the Landlord's satisfaction, to prevent wear, damage and erosion where the Land is exposed to water dripping from roofs, downpipes or any other source; and
- (q) revegetate with species indigenous to the Resort any part of the Land which has lost its natural vegetation and take all necessary action to prevent pedestrian or other traffic impeding the revegetation;

9.3 No warranty as to use

- (a) The Landlord gives no warranty (either present or future) that the Premises are fit or suitable for the Permitted Use.
- (b) The Tenant has entered into this Lease with full knowledge of and subject to any prohibitions or restrictions contained in any Law or any Requirement on how the Land or the Premises may be used.

9.4 Cost of alteration

The Tenant must pay to the Landlord on demand the Cost reasonably incurred by the Landlord of any alteration to any Services, sprinkler or fire prevention equipment and installations (including alarms) which may become necessary because of the non-compliance of the Tenant or of the Tenant's Agents with any Requirements, including those of any Tenant's insurer of the Premises or any Tenant's fittings within the period required or, if no period is required, within a reasonable period to meet those requirements.

10 PART 10 - COMPLIANCE WITH LAWS AND REQUIREMENTS

10.1 Compliance with Laws

- (a) The Tenant at its Cost must comply with and observe all Laws and Requirements relating to the Premises, the Services and the Permitted Use. If the Tenant receives any Notice from an Authority, before complying with such notice, the Tenant must provide a complete copy of it to the Landlord;
- (b) Before complying with any Law or Requirement, the Tenant must observe the provisions of this Lease.

10.2 Landlord may comply with Laws if Tenant defaults

If the Tenant fails to do so within a reasonable time, the Landlord may comply with any Law or Requirement referred to in this Clause either in part or whole. If the Landlord does this:

- (a) any Costs incurred by the Landlord must be paid or reimbursed to the Landlord by the Tenant within 30 days of demand by the Landlord;
- (b) it is without prejudice to any of the Landlord's other rights in respect of non compliance by the Tenant with its obligations under this Lease.

11 PART 11 - MAINTENANCE REPAIRS ALTERATIONS AND ADDITIONS

11.1 General Repairing Obligation

The Tenant at its Cost during the Term and any extension or holding over must keep the Premises and the Tenant's Services in good repair and condition and clean and tidy. For the avoidance of doubt, the Tenant acknowledges that the Landlord will have no responsibility for any repairs and maintenance to the Premises or the Tenant's Services.

11.2 Specific repairing obligations

The Tenant must, or the Landlord may at the Tenant's Cost (but without prejudice to any other right or remedy of the Landlord) and in addition to and without limiting the general obligation of the Tenant under Clause 11.1:

- (a) immediately make good any damage to the Premises caused or contributed to by the act or omission of the Tenant or of the Tenant's Agents;
- (b) immediately repair or replace all broken, or damaged glass in the Premises or in any wall forming part of the Premises;
- (c) repaint and replace floor and window coverings as necessary to comply with the General Repairing Obligation; and
- (d) maintain all carparking areas in good condition.

11.3 Landlord's right of inspection

The Landlord or the Landlord's Agents may enter the Premises and view the state of repair and condition of the Premises and Services:

- (a) at reasonable times on giving to the Tenant reasonable notice in writing (except in the case of emergency when no notice is required);
- (b) once every three years during the Term for the purpose of preparing a Building Standards Report.

11.4 Enforcement of repairing obligations

The Landlord may serve on the Tenant a Notice:

- (a) specifying any failure by the Tenant to carry out any repair, replacement or cleaning of the Premises or the Services which the Tenant is required to do under this Lease; and/or
- (b) requiring the Tenant to carry out the repair, replacement or cleaning within a reasonable time. If the Tenant does not comply with the Notice, the Landlord may elect to carry out such repair, replacement or cleaning and any Costs incurred must be paid by the Tenant when demanded by the Landlord by Notice.

11.5 Landlord may enter to repair

The Landlord, the Landlord's Agents and others authorised by the Landlord may at all reasonable times after giving the Tenant reasonable notice (except in the case of

emergency when no notice is required) enter the Premises to carry out any works and repairs if the Landlord elects to carry out any repair work which the Tenant is required or liable to do under this Lease or by any Law or by any Requirement but fails to do so within the time specified or otherwise allowed for that work to be done.

11.6 Works to Premises

- (a) The Tenant must not and must not permit any other person to carry out any Works without the Landlord's prior written consent;
- (b) In seeking the Landlord's consent the Tenant must submit plans and specifications of the Works for the approval of the Landlord;
- (c) if the Works involve interference with the natural vegetation or the natural surface of the Land the Tenant must also submit details of proposed maintenance of the work and methods to be used for soil conservation;
- (d) the Landlord may give consent subject to the Tenant satisfying the following requirements:
 - (i) in carrying out any Works the Tenant must comply with all reasonable directions of the Landlord in accordance with the consent given by the Landlord and such directions may include requirements in relation to materials and contractors or tradesmen to be used for the Works;
 - (ii) any Works must be executed promptly and continuously in a proper and workmanlike manner, in accordance with all Laws and Requirements and strictly in accordance with the consent given by the Landlord;
 - (iii) the Tenant must pay on demand all Costs incurred by the Landlord in considering or inspecting the Works and its supervision, including the reasonable fees of architects, engineers or other building consultants reasonably engaged by or on behalf of the Landlord;
 - (iv) the Tenant must obtain and keep current and comply with all necessary approvals or permits from all Authorities necessary to enable any Works to be lawfully effected, and must on request by the Landlord produce for inspection by the Landlord copies of all such approvals and permits;
 - (v) on completion of the Works the Tenant must within 30 days of completion obtain and produce to the Landlord, any unconditional certificates of compliance or of satisfactory completion issued by relevant Authorities and, a certificate by a consultant approved by the Landlord that the Works have been carried out in accordance with the plans and specifications approved by the Landlord;
 - (vi) the Works must be completed within the time period (if any) reasonably specified by the Landlord.

11.7 Notice to Landlord of damage, accident etc

The Tenant must immediately give Notice to the Landlord of any damage however caused, accident to or defects in the Premises or the Services which has caused or may cause environmental damage or danger to the public.

11.8 Geotechnical Faults

The Landlord makes no representation to the Tenant as to any defect or hazard associated with the Land including, without limitation, land instability due to any geotechnical fault and/or failure which may make the Land unable to properly support the Tenant's Improvements. The Tenant at its Cost, must undertake all work necessary to remedy any such defect or hazard and the Tenant releases and indemnifies the Landlord against any claim that may arise as a result of the matters specified in this Clause.

12 LANDLORD TO PREPARE BUILDING STANDARDS REPORT

12.1 Building Standards Report

After carrying out an inspection authorised by Clause 11.3(b) of this Lease the Landlord must prepare, at the Landlord's Cost, and provide to the Tenant a Building Standards Report for the purpose of providing a record of the Tenant's response to the matters relating to Standards of Occupancy and for reference during negotiations for a new lease under Clause 19.4.

12.2 Tenant's objections

If the Tenant disagrees with any part of the Building Standards Report it must advise the Landlord in writing within 30 Business Days of receiving the Report.

13 PART 13 - ASSIGNMENT AND SUBLETTING

13.1 No disposal of Tenant's interest

- (a) The Tenant must not without the prior written consent of the Landlord:
 - (i) assign, transfer, sub-let, grant any licence, mortgage, encumber, charge or part with or share the possession of or otherwise deal with or dispose of the Tenant's estate or interest in the Land or any part of the Land or the Premises;
 - (ii) declare itself trustee of the Land or any part of the Land or of any legal or equitable estate or interest in the Land or the Premises.

13.2 Landlord's consent to assignment

The Landlord will not unreasonably withhold its consent to a proposed assignment if:

- (a) the Tenant is not at the time in breach of this Lease;
- (b) the Tenant proves to the reasonable satisfaction of the Landlord that the proposed assignee is a respectable, responsible and solvent person and, in the case of a company, the directors are respectable, responsible and solvent persons and are capable of performing the Tenant's obligations under this Lease. The Tenant must submit to the Landlord all information reasonably required by the Landlord including:
 - (i) at least two financial references as to the proposed assignee (and its directors);

- (ii) a detailed statement of the financial circumstances of the proposed assignee and its directors (if applicable);
 - (iii) if a commercial business is to be operated from the Premises, at least two references as to the proposed assignee (and its directors) business experience.
- (c) the Tenant arranges for the proposed assignee to execute a deed of assignment of lease:
- (i) in a form approved by the Landlord or its solicitors;
 - (ii) which contains a covenant by the assignee to be bound by the terms of the Lease and an acknowledgment by the Tenant that the Tenant is not to be released from its obligations under the Lease;
- (d) if the proposed assignee is a company (other than a company whose shares are listed on the Australian Stock Exchange) then, if required by the Landlord, all of the directors of the company and any ultimate holding company (as defined in the Corporations Act) of the company must by deed (in a form acceptable to the Landlord) guarantee the due performance by the company of the terms and conditions of the Lease;
- (e) the Tenant provides the Landlord with such information as the Landlord reasonably requires to evidence that appropriate arrangements have been entered into relating to the ownership of the Tenant's Improvements;
- (f) the Tenant pays the Landlord all reasonable Costs incurred by the Landlord enquiring as to the respectability, responsibility and solvency of the proposed assignee (and its directors) and of obtaining the approval by the Landlord's solicitors of the documents referred to in this Clause.

13.3 Landlord's consent to sub-lease

The Landlord will not unreasonably withhold its consent to a proposed sublease if:

- (a) the Tenant is not at the time in breach of this Lease;
- (b) the Tenant warrants to the Landlord that the proposed sub-tenant is a respectable, responsible and solvent person and, in the case of a company, the directors are respectable, responsible and solvent persons and are capable of performing the Tenant's obligations under this Lease.
- (c) the Tenant arranges for the proposed sub-tenant to execute a deed of sub-lease:
 - (i) in a form approved by the Landlord or its solicitors;
 - (ii) which must not contain terms and conditions contrary to this Lease.
- (d) if the proposed sub-tenant is a company (other than a company whose shares are listed on the Australian Stock Exchange) then, if required by the Landlord, all of the directors of the company and any ultimate holding company (as defined in the Corporations Act) of the company must by deed (in a form acceptable to the

Landlord) guarantee the due performance by the company of the terms and conditions of the Lease.

- (e) the Tenant pays the Landlord all reasonable Costs incurred by the Landlord enquiring as to the respectability, responsibility and solvency of the proposed sub-tenant (and its directors) and of obtaining the approval by the Landlord's solicitors of the documents referred to in this Clause; and
- (f) the Tenant provides evidence to the Landlord that the sub-tenant will be a shareholder, unitholder or member of the Tenant.

13.4 Transfer of Sub-Lease

If any sub-lease to which the Landlord consents under Clause 13.3 is to be transferred or there is a change in the shareholding of the sub-tenant to which Clause 13.5 would apply the Tenant must seek the consent of the Landlord under Clause 13.3.

13.5 Deemed assignment on change of shareholding

There is a deemed assignment under this Clause if the Tenant is a Corporation and there is a change in more than 20% of any of the following:

- (a) the membership of the Corporation or any holding company of the Corporation;
- (b) the beneficial ownership of any shares in the capital of the Corporation or any holding company of the Corporation; or
- (c) the beneficial ownership of the business or assets in the Corporation conducted on or situated on the Premises.

If any of these events occur then the Tenant must obtain the Landlord's written consent under this Clause. This does not apply in relation to the sale of shares in the Tenant or the Tenant's holding company that is listed on a recognised stock exchange.

13.6 Acceptance of Rent by Landlord

The acceptance by the Landlord of any Rent or other payment from any Person other than the Tenant does not constitute an acknowledgment by the Landlord that it recognises that person as the Authorised assignee or sub tenant.

13.7 S.144 excluded

Section 144 of the Property Law Act 1958 does not apply to this Lease.

14 PART 14 - INSURANCE AND INDEMNITIES

14.1 Insurances to be taken out by Tenant

The Tenant must effect and maintain at the Tenant's Cost:

- (a) a standard public liability insurance policy endorsed to extend the indemnity under the policy to include the Tenant's liability under Clause 14.5 and noting the Landlord's interest. The policy must be for an amount of not less than the

Insured Sum or such higher amount as the Landlord may reasonably require in respect of any single occurrence;

- (b) insurance for all Tenant's Improvements and all Tenant's property in the Tenant's Improvements or on the Land; and
- (c) any other insurance reasonably required by the Landlord.

14.2 Tenant's insurance obligations

The Tenant must:

- (a) ensure that all policies of insurance effected by the Tenant pursuant to this Clause are taken out with an insurance office or company authorised by the Australian Prudential Regulation Authority to conduct new or renewal insurance business in Australia including policies underwritten by Lloyd's of London or otherwise approved by the Landlord which approval will not be unreasonably withheld.
- (b) produce to the Landlord, by 30 July or such other date as the Landlord may specify in each year during the Term, a copy of the current certificate of currency for the insurance required under clause 14.1; and
- (c) pay all premiums and other money payable in respect of the insurance policies when they become due and payable.

14.3 Non-vitiation of policies

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

14.4 Exclusion of Landlord's liability

- (a) In the absence of any negligence or deliberate act or omission or material breach of this Lease by the Landlord or the Landlord's Agents, the Tenant acknowledges that all property which may be in or on the Premises will be at the sole risk of the Tenant and the Landlord will not be liable for any Claim that the Tenant or the Tenant's Agents or any Person claiming by, through or under the Tenant may incur or make or any which arises from:
 - (i) any fault in the construction or state of repair of the Premises or any part of it; or
 - (ii) the collapse of the Premises irrespective of the cause; or
 - (iii) any defect in any Services; or
 - (iv) the flow, overflow, leakage, condensation or breakdown of any water, air-conditioning, gas, oil or other sources of energy or fuel, whether from the roof, walls, gutter, downpipes or other parts of the Premises.
- (b) In the absence of any negligence or deliberate act or omission or material breach of this Lease by the Landlord or the Landlord's Agents, the Tenant agrees that the

Landlord will not be responsible for and releases the Landlord and the Landlord's Agents from liability in respect of any:

- (i) Claim relating to any property of the Tenant or any other Person in or on the Premises or any part of it however occurring; or
- (ii) death, damage or injury to any Person or property in on or under the Premises or on any land near it suffered as a direct consequence of the construction, operation, presence or maintenance of the Premises and including, without limitation, damage or injury to any person or property resulting from any collision with or the collapse of the Premises.

14.5 Indemnities

In the absence of any negligence or deliberate act or omission or material breach of this Lease by the Landlord or the Landlord's Agents and despite:

- (a) any Claims having resulted from anything which the Tenant may be authorised or obliged to do under this Lease; and/or
- (b) at any time any waiver or other indulgence having been given to the Tenant in respect of any obligation of the Tenant under this Clause;

the Tenant will indemnify and keep indemnified the Landlord and the Landlord's Agents from and against all Claims for which any of them will or may be or become liable, during or after the Term, in respect of or arising from:

- (i) damage or injury to the Premises, to any property or to any Person or the death of any Person inside or outside the Premises to the extent caused or contributed to by any neglect or default of the Tenant or the Tenant's Agents under this Lease or by the use of the Premises by the Tenant or by the Tenant's Agents including, without limitation, injury or death to any Person or property resulting from any collision with or collapse of the Premises;
- (ii) the negligent use or neglect of the Services and facilities of the Premises by the Tenant or the Tenant's Agents or any other Person claiming through or under the Tenant or of any trespasser while such trespasser is in or on the Premises caused or contributed to by any default or negligent act or omission of the Tenant;
- (iii) overflow or leakage of water (including rain water) or from any Services whether originating inside or outside the Premises to the extent caused or contributed to by any act or omission on the part of the Tenant or the Tenant's Agents or other Person claiming through or under the Tenant;
- (iv) damage to plate, float and other glass to the extent caused or contributed to by any act or omission on the part of the Tenant or the Tenant's Agents.

15 PART 15 - DAMAGE AND DESTRUCTION

15.1 Tenant to reinstate or remove Tenant's Improvements on destruction

If the Tenant's Improvements or any part of them are at any time damaged or destroyed by any disabling cause then the Tenant must either:

- (a) within a reasonable time re-instate the Tenant's Improvements and make them fit for the occupation and use by the Tenant as if it was Works; or
- (b) within three months of the damage and destruction give notice of its intention to remove any remaining Tenant's Improvements and within six months of the damage and destruction reinstate the surface of the Land to a clean and clear state including removing all foundation and other improvements below the ground. When the Tenant has complied with this Clause to the satisfaction of the Landlord this Lease will be at an end.

15.2 Rent and Rates and Taxes

The Tenant must continue to pay the Rent, the Service Charges, the Rates and Taxes and any other money payable under this Lease or required by Law until this Lease ends even if the Tenant's Improvements are destroyed or damaged.

16 PART 16 - LANDLORD'S COVENANT

Quiet Enjoyment

If the Tenant pays the Rent and observes and performs in a timely fashion the covenants and conditions on its part contained in this Lease, the Tenant may occupy and enjoy the Land during the Term without any interruption by the Landlord or by any Person claiming through the Landlord except as provided in this Lease.

17 PART 17 - TERMINATION AND DEFAULT

17.1 Events of Default

The following are Events of Default:

- (a) if the Rent or any other money payable under this Lease is not paid by the due date for payment whether legally demanded or not;
- (b) if the Tenant at any time fails to perform or observe any of its obligations under this Lease;
- (c) if the Tenant or the Guarantor are companies then if either the Tenant or the Guarantor:
 - (i) enter into any compromise or arrangement with any of its creditors; or
 - (ii) has a receiver or receiver and manager or administrator or controller appointed of any of its assets; or
 - (iii) is wound up or dissolved or an order is made for winding up or dissolution; or

- (iv) has a resolution of the directors passed that in their opinion the company can no longer continue its business; or
 - (v) calls a meeting of its creditors pursuant to the Corporations Act; or
 - (vi) is placed under official management; or
 - (vii) has an inspector appointed pursuant to the Australian Securities Commission Act 1989; or
 - (viii) is unable to pay its debts as and when they fall due; or
 - (ix) makes an assignment for the benefit of or enters into an arrangement or composition or a moratorium whether formal or informal with its creditors or financiers; or
 - (x) has a provisional liquidator or a liquidator by any means appointed;
- (d) if any execution exceeding ten thousand dollars is issued, levied or enforced against the Tenant or the Guarantor or on any of the assets of the Tenant or the Guarantor unless such execution is fully paid or satisfied within seven days from the date of the issue, levy or enforcement, or appropriate legal proceedings to invalidate the execution are taken within seven days of the issue, levy or enforcement; and
- (e) if the Tenant or the Guarantor is a natural person and becomes or is made bankrupt or makes any assignment of his estate or any part of it for the benefit of creditors or otherwise seeks relief under or takes advantage of any Law for the time being in force relating to bankruptcy or insolvent debtors or causes or permits his goods to be levied on or under any execution or other legal process.

17.2 Forfeiture of Lease

If an Event of Default occurs the Landlord may, without prejudice to any other Claim which the Landlord has or may have against the Tenant or any other Person at any time re-enter into and upon the Land or any part of it in the name of the whole and thereupon this Lease will be absolutely determined.

17.3 Re-entry

The right of re-entry for breach of any covenant or condition in this Lease to which section 146(1) of the Property Law Act 1958 applies or for failure to pay Rent must not be exercised until the expiration of 45 days after the Landlord has served on the Tenant the notice required pursuant to that section.

17.4 Landlord may rectify

If the Tenant is in default under this Lease and fails to rectify that default within 14 days of the Landlord notifying the Tenant in writing of that default and requiring its rectification, the Landlord may, but will not be obliged to, remedy at any time without further notice any default by the Tenant under this Lease. If the Landlord so elects all reasonable Costs incurred by the Landlord (including legal costs and expenses) in remedying the default will constitute a liquidated debt and must be paid by the Tenant to the Landlord on demand.

17.5 Waiver

- (a) The Landlord's failure to take advantage of any default or breach of covenant by the Tenant will not be or be construed as a waiver of it, nor will any custom or practice which may grow up between any of the Parties in the course of administering this Lease be construed to waive or to lessen the right of the Landlord to insist upon the timely performance or observance by the Tenant of any covenant or condition of this Lease or to exercise any rights given to the Landlord in respect of any such default;
- (b) A waiver by the Landlord of a particular breach is not deemed to be a waiver of the same or any other subsequent breach or default;
- (c) The demand by the Landlord for, or subsequent acceptance by or on behalf of the Landlord of, Rent or any other money payable under this Lease will not constitute a waiver of any earlier breach by the Tenant of any covenant or condition of this Lease, other than the failure of the Tenant to make the particular payment or payments of Rent or other moneys so accepted, regardless of the Landlord's knowledge of any earlier breach at the time of acceptance of such Rent or other moneys.

17.6 Tender after determination

If the Landlord accepts money from the Tenant after the Landlord ends this Lease the Landlord may (in the absence of any express election of the Landlord) apply it:

- (a) first, on account of any Rent and other moneys accrued and due under this Lease but unpaid at the date the Lease is ended; and
- (b) secondly, on account of the Landlord's Costs of re-entry.

17.7 Essential terms

The Landlord and the Tenant agree that each of the following covenants by the Tenant are essential terms of this Lease:-

- (a) to pay the Rent (Clause 4);
- (b) to pay or reimburse Rates and Taxes (Clause 5);
- (c) to pay the Service Charge and Headworks Charge (Clauses 5.5 and 5.6);
- (d) not to use the Land other than for the Permitted Use (Clause 9.1);
- (e) to comply with Laws and Requirements (Clause 10);
- (f) to carry out Works only in the manner permitted by this Lease (Clause 11.6);
- (g) subject to this Lease, to repair and maintain and, if necessary, reinstate or demolish the Tenant's Improvements (Clauses 11, 15.1 and 21);
- (h) not to assign this Lease or sub-let the Land or any part of it other than in accordance with Clause 13; and

- (i) to take out and keep current those insurances required to be taken out by the Tenant (Clause 14).

17.8 Damages for Breach

The Tenant covenants to compensate the Landlord for any breach of an essential term of this Lease. The Landlord may recover damages from the Tenant for such breaches. The Landlord's entitlement under this Clause is in addition to any other remedy or entitlement to which the Landlord is entitled (including to terminate this Lease).

17.9 Repudiation by Tenant

- (a) The Tenant covenants to compensate the Landlord for any loss or damage suffered by reason of the Tenant's conduct (whether acts or omissions):
 - (i) constituting a repudiation of this Lease or of the Tenant's obligations under this Lease; or
 - (ii) breaching any Lease covenants.
- (b) The Landlord may recover damages against the Tenant in respect of repudiation or breach of covenant for the loss or damage suffered by the Landlord during the entire term of this Lease.

17.10 Acts by the Landlord not to constitute forfeiture

The Landlord's entitlement to recover damages shall not be affected or limited if any of the following events occur:-

- (a) the Tenant abandons or vacates the Land; or
- (b) the Landlord elects to re-enter the Land or to terminate the Lease; or
- (c) the Landlord accepts the Tenant's repudiation; or
- (d) the Parties' conduct (or that of any of their servants or agents) constitutes a surrender by operation of law.

17.11 Mitigation

Nothing in this Clause will operate to relieve the Landlord of any obligation which would otherwise apply to mitigate any loss or damage suffered by the Landlord.

18 PART 18 – MISCELLANEOUS

18.1 Notices

- (a) Any Notice served or given by either Party pursuant to this Lease will be valid and effectual if signed by either Party or by any director, alternate director, secretary, executive officer, attorney, managing agent, or lawyers for the time being of that Party or any other Person nominated from time to time by that Party.

- (b) Each Party must immediately provide the other Party with a Notice containing full particulars of the address and facsimile information of the Party giving the Notice and must update such notice in the event of any change.
- (c) Any Notice required to be served or which the Landlord may elect to serve on the Tenant shall be sufficiently served if:
 - (i) served personally;
 - (ii) sent by facsimile transmission to the Tenant at its facsimile number in this Lease or at such other facsimile number as may be notified in writing by the Tenant from time to time;
 - (iii) forwarded by prepaid security post to the Tenant at its address in this Lease or at such other address as may be notified in writing by the Tenant from time to time.
- (d) Any Notice required to be served on the Landlord shall be sufficiently served if:
 - (i) served personally;
 - (ii) sent by facsimile transmission;
 - (iii) forwarded by prepaid security post addressed to the Landlord to the Name and Notice Address.

All such Notices must be addressed to the Landlord at that address or at such other address as the Landlord from time to time nominates.

- (e) Any Notice is deemed to have been duly served if given:
 - (i) by post, two Business Days after the day it was posted;
 - (ii) by facsimile, at the time of transmission to the Party's facsimile number unless the time of despatch is later than 5.00 p.m. at the place to which the facsimile transmission is sent in which case it shall be deemed to have been received at the commencement of business on the next Business Day in that place. A copy of any Notice sent by facsimile transmission must also on the date of despatch be sent by mail to the Party to whom it was sent by facsimile transmission;
 - (iii) personally, on the date of service.

18.2 Overholding

If the Tenant continues in occupation of the Land after the Term has expired without objection by the Landlord:

- (a) the Tenant will be deemed a tenant on the terms of this Lease from month to month;
- (b) either Party may end the Lease by giving to the other Party at any time one month's Notice.

18.3 Set-Off

If the Tenant defaults in the payment of the Rent, the Rates and Taxes or any other money payable under this Lease to the Landlord or any Authority, the Landlord may set-off that amount against any moneys which may from time to time be payable by the Landlord to the Tenant on any account whatsoever but any set-off will not relieve the Tenant from its default for any non-payment of the Rent, the Rates and Taxes or other moneys under this Lease.

18.4 Easements

The Landlord, subject to the Tenant's approval which must not be unreasonably withheld, may grant rights of support and enter into any arrangement or agreement with any party with an interest in any adjacent land or with any Authority as the Landlord thinks fit for the purpose of:

- (a) public or private access to the Land; or
- (b) support structures erected on adjoining land;
- (c) the provision of Services.

The Landlord must not exercise any rights under this Clause if it substantially and permanently derogates from the enjoyment of the rights of the Tenant under this Lease.

18.5 Guarantee

If a Guarantee and Indemnity is annexed to this Lease, the Tenant must on the same date as the execution of this Lease procure its execution by the Guarantors named in it and deliver the executed Guarantee and Indemnity to the Landlord. If the Landlord elects, this Lease will not take effect until the Guarantee and Indemnity has been properly executed by the Guarantors and delivered to the Landlord.

18.6 Waiver

No waiver by one Party of a breach by or on behalf of the other Party of any obligation, provision or condition of this Lease expressed or implied shall operate as a waiver to or of any other breach of the same or any other obligation, provision or condition of this Lease expressed or implied.

19 PART 19 - TENANT'S RIGHT TO NEGOTIATE**19.1 Tenant may give notice**

The Tenant may give notice to the Landlord that it wishes to negotiate a new Lease for the Premises from the expiration of the Term if:

- (a) the Tenant gives the Landlord such Notice not less than three years before the Term expires;
- (b) there is no unremedied default which the Landlord has given the Tenant written Notice;

- (c) the Tenant has not persistently defaulted under this Lease throughout its Term and the Landlord has not given the Tenant Notices of the defaults; and
- (d) the Tenant has not been given Notice under Clause 20.

19.2 Information from Landlord

The Landlord must provide on request by the Tenant the following information:

- (a) the proposed redevelopment or refurbishment obligations which will be placed on the Tenant if a further lease is granted;
- (b) indicative lease information which may include, without limitation:
 - (i) description of the Land proposed to be leased if this is different from the Land;
 - (ii) hours of operation (if applicable);
 - (iii) the range of lease terms available including option periods (if any);
 - (iv) the proposed basis for determining the commencing rent; and
 - (v) the proposed permitted uses.

19.3 Tenant's Proposal

Within twelve months of giving the Negotiation Notice, the Tenant must submit to the Landlord a proposal for the use of the Premises. The Tenant's Proposal must include all information reasonably required by the Landlord including:

- (a) a business plan including details of, without limitation budgets and financial projections for the first three years of the Tenant's operation under the new Lease including:
 - (i) financial statements including balance sheets, profit and loss statements and statements of cash flow certified by a certified practising accountant for the two years immediately preceding the date of the Tenant's proposal;
 - (ii) details of the capital requirements of the Tenant for the purposes of entering into the new Lease and information as to how the capital requirements will be satisfied;
 - (iii) a marketing plan including details of advertising and promotion to be undertaken by the Tenant (if applicable);
 - (iv) details of the market currently being serviced by the Tenant and any future markets that the Tenant proposes to attract;
 - (v) an analysis of risks that may be encountered by the Tenant in undertaking the new Lease.
- (b) if a redevelopment or refurbishment of the Premises is proposed:

- (i) for a redevelopment, conceptual architectural designs of the proposed redevelopment /refurbishment including preliminary site and building plans, preliminary sections and elevations, preliminary selection of building systems and materials and development of approximate dimensions, area and volume;
 - (ii) for a refurbishment, details of the proposed works including where applicable, concept plans and details of materials to be used;
 - (iii) proposed uses including, where applicable, proposed bed numbers;
 - (iv) proposed timing of the redevelopment or refurbishment including, where appropriate, the staging. Where staging is proposed a description must be provided of each stage of the works with the time period under which each stage is to be undertaken and the estimated construction cost of each stage;
 - (v) an estimate certified by a quantity surveyor or building consultant of the total cost of construction or completing the proposed redevelopment or refurbishment including without limitation finance costs, building costs itemised by reference to principle trades, service connection payments, capital in-going payments and any other specified costs associated with the refurbishment or redevelopment; and
 - (vi) a geotechnical assessment to ensure that the proposed redevelopment of the Premises is possible and suitable.
- (c) a building surveyors report on the structural condition of the Tenant's Improvements;
 - (d) the Tenant's written response to the indicative lease information contained in the Landlord's proposal; and
 - (e) where the Premises include any above ground or underground storage tank, a report assessing the extent of any contamination on the Land.

19.4 Negotiations

After the Landlord has received the Tenant's proposal and having regard to:

- the Building Standards Reports which have been prepared for the Premises;
- any objections that the Tenant has raised to the Building Standards Reports under Clause 12.2; and
- the way in which the Tenant has responded to the matters relating to Standard of Occupancy identified in those reports,

the Landlord and the Tenant will use reasonable endeavours to negotiate a new lease of the Land. Neither party will be under any obligation to enter into a new lease for the Land or for any other land within the Alpine Resort and provided that if the Landlord and the Tenant have not completed negotiations for a new lease not less than 12 months before the term expires the negotiation will be deemed to be at an end and the Landlord will be free to lease the Land to another party.

19.5 No endorsement

Nothing in this Clause or the Lease will be taken or construed as the Landlord's endorsement of all or any part of the business plan that forms part of the Tenant's Proposal and the Landlord is not obliged in any way to assist in the implementation of such business plan or to ensure its outcomes.

20 PART 20 - SURRENDER OF LEASE**20.1 Landlord may give notice of requirement to surrender**

If during the Term, the Land or any part is reasonably required by the Landlord for the improvement of the Alpine Resort the Landlord may, having first obtained the approval of the Minister, give notice in writing to the Tenant to:

- (a) cancel the Lease either wholly or as to part; and
- (b) require the Tenant to remove all or some of the Tenant's Improvements within the time specified in the notice.

20.2 Failure to comply

If the Tenant fails to comply with the notice under Clause 20.1 the Tenant's Improvements concerned will become the property of the Landlord subject to the Tenant's right to compensation under Clause 20.3.

20.3 Compensation

If this Lease is cancelled under Clause 20.1 the Tenant will be entitled to compensation for the value of the Tenant's interest in the Premises. If no agreement as to the amount of compensation can be reached within 3 months from the date of cancellation the amount will be referred for determination under Clause 22. In determining the sum to be paid under this Clause compensation will be given for the value of the Tenant's Improvements (excluding any furnishings, equipment and chattels which can be removed from the Premises and reused) on the Land and also of the business conducted from the Premises in accordance with the provisions of this Lease.

21 PART 21 - DETERMINATION OF TERM**21.1 Tenant to yield up**

When this Lease ends, unless the Tenant has been granted a new lease of the Premises, the Tenant at its Cost must demolish and remove the Tenant's Improvements in a proper and workmanlike manner in compliance with the requirements of all Authorities and to the satisfaction of the Landlord including landscaping, vegetation and drainage as required by the Landlord.

21.2 Tenant to continue pay rent etc

The Tenant must continue to pay the Rent, the Service Charge, the Rates and Taxes and all other money payable under this Lease until it has demolished and removed the Tenant's Improvements.

21.3 Tenant not to cause damage

- (a) The Tenant must not cause or contribute to any damage to the Land in the demolition and removal of the Tenant's Improvements.
- (b) If the Tenant causes any such damage in the demolition and removal of the Tenant's Improvements, the Tenant must make good any such damage and must leave the Land in a condition that is acceptable to the Landlord acting reasonably and all Authorities.
- (c) If the Tenant fails to do so within a reasonable time, the Landlord may make good any such damage at the Cost of and as agent for the Tenant and recover from the Tenant the reasonable Cost to the Landlord of doing so as a liquidated debt payable on demand.

21.4 Failure by Tenant to remove the Tenant's Improvements

If the Tenant fails to remove the Tenant's Improvements in accordance with this Clause or if the Landlord re-enters the Land, the Landlord at the Landlord's option (without prejudice to any action or other remedy which the Landlord has) may:

- (a) demolish and remove the Tenant's Improvements; and
- (b) without being guilty of any manner of trespass, cause any of the Tenant's property to be removed and stored in such manner as is reasonable at the risk and at the Cost of Tenant and/or at the option of the Landlord sell it as the attorney of the Tenant and appropriate the proceeds of sale in payment of any Rent or other money owing by the Tenant to the Landlord and pay any residue without interest to the Tenant; or
- (c) treat the Tenant's Improvements as if the Tenant had abandoned its interest in it and it had become the property of the Landlord, and deal with it in such manner as the Landlord thinks fit without being liable in any way to account to the Tenant for them.

21.5 Tenant to indemnify and pay Landlord's Costs

The Tenant must:

- (a) indemnify and keep indemnified the Landlord in respect of the reasonable cost of the removal and storage of the Tenant's property, the cost of demolishing and removing the Tenant's Improvements and also in respect of all Claims which the Landlord may suffer or incur at the suit of any Person (other than the Tenant) claiming an interest in the Premises or the Tenant's property by reason of the Landlord acting in any manner permitted in this Clause; and
- (b) pay to the Landlord as a liquidated debt payable on demand any reasonable Costs incurred by the Landlord in exercising its rights pursuant to this Clause, including any excess of Costs over moneys received in disposal of the Tenant's property pursuant to the Landlord's rights contained in Clause 21.4 except to the extent caused by any negligent act or omission of the Landlord.

21.6 Earlier breaches

The ending of this Lease does not prejudice or affect any rights or remedies of the Landlord against the Tenant in respect of any earlier breach by the Tenant of any Lease covenants and conditions.

22 PART 22 - DISPUTE RESOLUTION

22.1 Dispute notice

If a dispute or difference arises under Clause 20.3 which is to be referred to dispute resolution under this Clause 22 then either party may give to the other a Dispute Notice adequately identifying the matters the subject of that dispute or difference.

22.2 Dispute resolution mechanism

A dispute or difference to be referred to resolution under this special condition must be referred to a person agreed between the parties and, failing agreement within 10 Business Days of receipt of the Dispute Notice, then any dispute or difference shall be referred to an appropriate professional appointed by the President of the Institute of Arbitrators Australia, Victorian Chapter.

22.3 Expert resolution

The person agreed upon or appointed to determine the dispute or difference shall:

- (a) act as an expert and not as an arbitrator and his decision shall be final and binding on the parties;
- (b) have power to investigate, make inquiries, call witnesses and obtain the advice of any consultant;
- (c) conduct proceedings in any manner he considers appropriate; and
- (d) hand down his decision within 20 Business Days of his appointment.

22.4 Parties co-operation

The parties must provide the agreed or appointed expert with all assistance and documents and may at any hearing conducted by the expert appear personally or be legally represented or be represented by any consultant.

22.5 Costs of expert

The costs of the agreed appointed expert must be borne equally unless otherwise determined by the expert.

EXECUTED as a deed.

THE COMMON SEAL OF)
ALPINE RESORT MANAGEMENT)
BOARD was affixed by authority of the)
Board in accordance with its powers under)
the Alpine Resorts (Management) Act 1997)
in the presence of:

.....
Chairman

.....
Member

.....
Name of Chairman (print)

.....
Name of Member (print)

THE COMMON SEAL of [*] is affixed in)
accordance with its constitution in the)
presence of:)

.....
Company Secretary/Director

.....
Director

.....
Name of Company Secretary/Director (print)

.....
Name of Director (print)

I, John Thwaites MP Minister for Environment

- Approve the grant of this Lease;
- Approve the terms and conditions contained in this Lease

..... Dated:

SCHEDULE 1

1 LANDLORD:

2 TENANT:

3 ALPINE RESORT

4 LAND:

5 COMMENCEMENT DATE:

6 TERM:

7 RENT: \$* per annum payable *

8 PERMITTED USE:

9 FURTHER TERM:

10 REVIEW DATE(S):

(a) CPI Review:

(b) Market Review:

**11 NAME AND NOTICE
ADDRESS:**

12 INSURED SUM:

13. HEADWORKS CHARGE:

SCHEDULE 2

RENT REVIEW

PART A – MARKET REVIEW

The Landlord may review the annual rent on each Review Date when there is to be a Market Review as follows;

- 1 Not earlier than three months before the Review Date and not later than sixty days after the Review Date the Landlord must give the Tenant notice of the new rental it proposes be paid by the Tenant during that period or part thereof being the rent advised to it by its valuer.
- 2 Time shall not be of the essence in respect of the Landlord's rent review notice and any delay by the Landlord in giving notice will not affect the Landlord's rights.
- 3 Within thirty days of being notified in writing of the proposed new rent the Tenant may give to the Landlord written notice of objection to the proposed new rent and within a further thirty days from the notice of objection supply the Landlord with a rent valuation from a qualified valuer who is a member of the Australian Property Institute. If no notice of objection is given or if notice is given and no rent valuation is supplied the new rent will be the new rent as proposed in the Landlord's notice.
- 4 If within thirty days from the lodgment with the Landlord of the Tenant's rent valuation the Landlord and the Tenant are unable to agree on the new rent and a conference of the Landlord's and Tenant's valuers has failed to result in agreement on the rent the new rent shall be determined by a valuer nominated by the President for the time being of the Australian Property Institute (the **nominated valuer**) who in making a determination, must accept representations from either Party received within twenty one days of the appointment.
- 5 The decision of the nominated valuer will be final and binding and the nominated valuer's costs and fees must be paid by the parties equally.
- 6 Until the new rent is agreed or determined the Tenant must pay rent at the rate applicable immediately prior to the date fixed for review until such time as the new rent is determined.
- 7 After the new rent is determined the Tenant must pay to the Landlord or the Landlord must refund to the Tenant the difference if any between the amount of the new rent paid since the date fixed for review.

Method of Determination:

- 1 In determining a new rent for the Land the nominated valuer must as nearly as possible determine the open market rent value on the date when that rent is to apply for the Land having regard to the following matters:
 - (a) act as an expert and not as an arbitrator and his decision will be final and binding on the parties;

- (b) there is a reasonable period within which to negotiate the new rent having regard to the nature of the property and the state of the market;
- (c) the Landlord and the Tenant are well acquainted with the Land and aware of any factors which might affect its value.
- (d) The length of the Term and the period between rent reviews.
- (e) The terms and obligations of the Lease.
- (f) The highest and best use for the Land.
- (g) The rental of comparable land
- (h) Rents paid to the Tenant under any sub leases or licences

but must disregard the value of the Tenant's Improvements and the goodwill of the Tenant's business.

PART B – CPI REVIEW

- 1 Where there is a CPI Review the rent payable from the relevant Review Date will be determined in accordance with the formula:

$\frac{(z)}{(y)}$ a

where

“a” is the Rent payable in respect of the year immediately preceding that Review Date;

“z” is the value of the Index Number of the quarter ending within three months immediately preceding that Review Date; and

“y” is the value of the Index Number for the quarter ending within three months immediately preceding the immediately preceding Review Date or, in the case of the initial Review Date the corresponding quarter preceding the Commencement Date

For the purposes of the formula “Index Number” means the All Groups Consumer Price Index, Melbourne issued by the Australian Bureau of Statistics (or its successor body) for the quarters ending on the last days of March, June, September and December (CPI).

- 2 If the CPI is discontinued or is calculated from a different base year or by reference to a significantly different basket or if it becomes impossible by reason of any change in the method used to compile the CPI or for any other reason whatsoever to calculate the reviewed rent by reference to the CPI or the CPI ceases to be published then the Landlord and the Tenant must use their best endeavours to agree upon another index ("the Substitute Index") in substitution for the CPI. If the parties cannot agree on the Substitute Index within fourteen days of either party notifying the other that it considers it necessary to nominate a substitute index or if there is a dispute as to whether a substitute index is required then either party may request the President of the Institute of Actuaries of Australia to nominate an independent consulting actuary to determine the dispute or to nominate a Substitute Index (as the case may be). The independent consulting actuary shall act as an expert and not an arbitrator and his decision shall be final and binding on the parties. The fees of the independent consulting actuary shall be paid equally by the parties and he shall be requested to make his determination within fourteen days of his appointment.
- 3 If the annual rent to apply after any CPI Review has not been ascertained by the relevant Review Date then the Tenant will continue to pay to the Landlord the rent payable immediately prior to the Review Date until the reviewed rent has been determined whereupon the Tenant shall immediately pay to the Landlord the amount necessary to ensure that the Landlord receives the reviewed rent from the Review Date or, if the Reviewed Rent is less than the rent paid prior to the Review Date, the Landlord will credit the difference to the Tenant’s rent account.
- 4 Any Reviewed Rent payable pursuant to this schedule shall be payable at the times and in the manner set forth in this Lease or any variation or extension thereof otherwise relating to the payment of rent.

SCHEDULE 3

FURTHER OBLIGATIONS

1. The Tenant must keep the Premises open for business during the Snow Season and during such other period as the Landlord requires.

APPENDIX ONE
(PLAN OF LAND)