

DATE

28th July

1999

COPY

Between

**MINISTER ADMINISTERING THE HERITAGE ACT
(LESSOR)**

and

**DAMIEN MICHAEL MILLER AND VICKI ANNE BURTON-TAYLOR
(LESSEE)**

DEED OF AGREEMENT TO LEASE

■ DUNHILL ■
■ MADDEN ■
■ BUTLER ■

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HILLVIEW

DEED made

28th July

1999

BETWEEN: MINISTER ADMINISTERING THE HERITAGE ACT of Level 11, 2-10
Wentworth Street, Parramatta, NSW ("Lessor")

AND DAMIEN MICHAEL MILLER AND VICKI ANNE BURTON-TAYLOR
of Lot 15 Elsemore Road, Exeter, NSW ("Lessee")

RECITALS

- A. The Lessor is the owner of Hillview.
- B. Under the terms of a Deed dated 9 July 1985 between the Lessor and the Late Edward Harold Klein, the Lessor undertook to maintain and conserve 'Hillview' and all its fixtures, fittings and all other contents in a reasonable state of repair and to make a permanent conservation order over 'Hillview' pursuant to section 44 of the *Heritage Act*.
- C. "Hillview" is now listed as state Heritage Register Item No. 442.
- D. The Lessor invited expressions of interest from persons interested in conserving and maintaining Hillview and its fixtures, fittings and contents and occupying Hillview as a lessee.
- E. The Lessor selected the Lessee as the successful proponent and the Lessor has agreed to grant and the Lessee will take from the Lessor a lease subject to the terms, covenants and conditions contained in this Deed.

OPERATIVE PROVISIONS

1. COMMON OBJECTIVES

1.1 The Deed of Gift

- (a) Hillview is an item of environmental heritage within the meaning of the Heritage Act 1977 and is now listed as State Heritage Register Item No. 442.
- (b) The Late Edwin Harold Klein gave Hillview to the Lessor upon the condition that the Lessor maintain and conserve Hillview and all its fixtures, fittings, and all other contents in a reasonable state of repair.
- (c) The Lessor has determined that Hillview is better maintained and conserved by a permanent occupant obliged to maintain and conserve the Property under a plan of maintenance and conservation.

- (d) The Lessee has demonstrated a high level of interest in the heritage significance of Hillview and the requisite expertise themselves or through their consultants to comply with the requirements of the Deed of Gift referred to in Recital B. The Lessor is satisfied that the Lessee will be a suitable agent for the Lessor to carry out its obligations under the Deed of Gift.

1.2 Restoration

The parties share a common vision of reinstating Hillview to a level which reflects the former status of Hillview as a vice-regal residence and of maintaining the historical value of the property through a high standard of conservation work and a high level of protection for the building fabric. The parties have reached agreement as to certain matters necessary to achieve these objectives which include:

- (a) the managed conservation of Hillview in accordance with a conservation plan, a contents maintenance and use plan and a conservation and maintenance plan for the garden;
- (b) the grant to the Lessee of the Lease.

2. INTENTION OF THE PARTIES

The Parties agree that:

- (a) when reinstatement of the Buildings is completed the Lessor will grant to the Lessee a lease for 40 years;
- (b) the parties will cooperate throughout the term of this Deed and the Lease to achieve the common objectives set out in Clause 1.2.

3. DEFINITIONS AND INTERPRETATION

3.1 Definitions

In this Deed, unless inconsistent with or repugnant to the context, the following words and expressions shall have the respective following meanings:

"Application" means the application for Building Approval.

"Approval" includes Development Approval.

"assign" means to assign, transfer, agree to sub-let, licence (other than as provided by Clause 10.3), grant any entitlement to possess or occupy, charge, mortgage, grant an option or other rights over or otherwise deal with or encumber and "assignment" and "assignee" shall have comparable meanings.

"Authority" means any federal, state or local government, semi-government, quasi-government or other body or authority, statutory or otherwise, including but not limited to any court or tribunal.

"Buildings" means the existing improvements on the Land and each one of them the improvements, fixtures, fittings, plant and equipment to be erected and installed and other works including landscaping and necessary services and security measures to be undertaken in accordance with this Deed .

"Business Day" means any day on which the majority of trading banks are open for the conduct of business in Sydney, Australia.

"Commencing Date" means the date upon which the Lease commences.

"Condition Precedent" means:

- (a) obtaining all necessary approvals to carry out the Lessee's Work and to establish a guest house and museum on the Property;
- (b) completion of the Lessee's Work:
 - (i) to the satisfaction of the Lessor;
 - (ii) in accordance with the Conservation Plan, the Contents Maintenance and Use Plan and the Deed of Gift; and
 - (iii) in accordance with this Deed.

"Consent Authority" means the relevant Authority or Authorities responsible for granting development consent and building approval in respect of the Lessee's Work.

"Conservation and Management Plan for the Garden - 1994" means the plan for the conservation and maintenance of the garden, a copy of which was exhibited at the time of execution of this Deed and signed by the parties for identification.

"Conservation Plan" means the Conservation Plan adopted by the Heritage Council of New South Wales as revised by the Consultant in 1999.

"Contents" means those items which the Lessor notifies the Lessee form the contents of "Hillview" in accordance with Clause 6.2.

"Contents Maintenance and Use Plan" means the plan developed and agreed in accordance with Clause 6.2.

"Corporation" means a corporation, company or body corporate.

"Consultant" means Paul Davies, architect.

"Deed" means this deed and includes any annexures, schedules or exhibits to this deed.

"Deed of Gift" means the Deed dated 9 July, 1985 between the Lessor and the Late Edward Harold Klein, referred to above, a copy of which is annexed and marked "B";

"**Development Approval**" means, unless otherwise specified, approval granted by Wingecarribee Shire Council for the use of the Land as a guest house, museum, rural uses and ancillary uses including restaurant function centre and conference centre and approval for the Lessee's Work and any variation to that approval and any supplementary approval obtained by the Lessee from time to time with the prior consent of the Lessor all on conditions which are acceptable to the Lessor.

"**Event of Default**" means each of the events set out in Clause 11.1.

"**Insolvency Event**" means the making of a sequestration order against the estate of the Lessee or where the Lessee permits any act of bankruptcy or suffers or permits anything bringing or having the effect of bringing the Lessee's estate within the operation of any insolvency or bankruptcy laws whereby the Lessee's estate may be assigned for the benefit of the Lessee's creditors or the Lessee make any composition with the Lessee's creditors or any such event in relation to one of the lessees.

"**Land**" means the land known as "Hillview", Illawarra Highway, Sutton Forest contained in Folio Identifier 12/260417.

"**Lease**" means the proposed lease comprising Annexure "A".

"**Lessee**" means the lessee named as such on the first page of this Deed, and their successors and assigns.

"**Lessee's Plan**" means the plan proposed by the Lessee for the Lessee's Work and includes all work proposed by the Lessee for the development of the guest house, museum and ancillary uses.

"**Lessee's Work**" means the work which the Lessee must carry out and such other work as the Lessee may elect to carry out, all in accordance with the Conservation Plan, the Contents Maintenance and Use Plan, the Lessee's Plan (as approved by the Lessor) and this Deed.

"**Lessor**" means the lessor named as such on the first page of this Deed and its successors and assigns.

"**Licence**" means one of:

- (a) the right of agistment for cattle;
- (b) the right to use a field on Hillview as a ground for the Sutton Forest Cricket Club; and
- (c) the right to act as the caretaker of the Land.

"**Month**" means calendar month and "**monthly**" shall have a comparable meaning.

"**Outgoings**" means and includes:

- (a) all Rates and Taxes;

- (b) all insurance premiums and any stamp duties for insurance of the Property in the full insurable reinstatement value against earthquake, explosion, riot, civil commotion, fire, flood, lightning, storm and tempest (including demolition debris removal with escalation provision) and against such other risks (referable to the Property) including public liability which the Lessee is required to maintain under this Deed;
- (c) the cost of all water supply, sewerage and drainage services to and from the Property including excess charges and meter rents;
- (d) the cost of inspections and reports undertaken by the Lessor or on its behalf; and
- (e) the cost of audits of the amount of the Outgoings.

"party" means a party to this Deed and "parties" means the parties to this Deed.

"Property" means the Land and Buildings.

"Rates and Taxes" means and includes all rates taxes charges assessments outgoings and impositions of every kind (other than for or on account of any tax on income or capital gain) whether parliamentary municipal or otherwise and whether assessed charged or imposed by or under any federal or state law or by any federal state or local authority and whether on the capital or rental value of the Land or of a capital or revenue nature or of a novel kind which may be assessed charged or imposed or in respect of which a liability arises by virtue of the estate or interest of the Lessor in the Land and/or Property or the estate or interest of any other person having an estate or interest in the Land and/or Property superior to or concurrent with the Lessor and includes any tax (including a goods and services tax charged on the supply of the Land and or Buildings to the Lessee under this Lease) but in the case of land tax or any similar tax upon land means and includes the amount by which the liability of the Lessor or such other person as aforesaid for such tax is increased by reason of its estate or interest in the Property.

"Representative" means the person from time to time who represents a party

"Statute" means any legislation now or hereafter in force of the Parliament of the Commonwealth of Australia or any State or Territory thereof and any rule, regulation, ordinance, by-law, statutory instrument, order or notice now or hereafter made under such legislation.

3.2 Interpretation

In this Deed, unless inconsistent with the context:

- (a) words importing persons shall include individuals and corporations;
- (b) words importing the singular number or plural number shall be deemed to include the plural number or singular number respectively;
- (c) words importing any gender shall include all other genders as the case may require;
- (d) references to statutes, ordinances or regulations shall include any statutes, ordinances or regulations amending, consolidating or replacing them;

- (e) any covenant, term, condition or provision of this Deed to be performed or warranty, guarantee or indemnity given by 2 or more persons shall bind those persons jointly and each of them severally;
- (f) the headings contained in this Deed are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of the terms, conditions, clauses or paragraphs of this Deed nor in any way affect this Deed;
- (g) a reference to any party or to any Authority or to any other person shall include their successors and permitted assigns and:
 - (i) in respect of any Authority, includes any administrator or other person appointed by or on behalf of a government or any minister of a government and any body in which that Authority is merged or which as at the relevant time substantially fulfils the functions of that Authority; and
 - (ii) in respect of any body or association, includes any body or association in which that body or association is merged or which as at the relevant time substantially fulfils the functions of that body or association;
- (h) a reference to a day in this Deed shall, except where such reference is to a Business Day, mean a day, whether or not a Saturday, Sunday or public holiday; and
- (i) subject to any express provision to the contrary in this Deed:
 - (i) where the consent of the Lessor is required pursuant to any provision of this Deed such consent shall be the prior written consent of the Lessor; and
 - (ii) the Lessor shall, in exercising its discretion as to the giving of consent, give or withhold such consent expeditiously having regard to all relevant circumstances of which it is aware and give or withhold such consent in its absolute and unfettered discretion.

3.3 Severability

If any provision of this Deed is or becomes invalid, void, voidable or otherwise unenforceable for any reason whatsoever, then:

- (a) unless a contrary intention appears, that provision shall be severable from this Deed.
- (b) to the extent permissible by law, the provision shall be forthwith replaced (and any consequential amendments to the Deed shall be made) by the parties with a valid and enforceable provision which so far as possible achieves the same purpose, object or effect as the invalid, void, voidable or otherwise unenforceable provision was intended to achieve PROVIDED THAT in doing so the Parties shall preserve the basic purpose and intent of this Deed and shall act reasonably and in good faith; and
- (c) in the event the Parties cannot reach agreement as to a replacement provision, then either Party shall be at liberty to request the President of the Law Society of New South Wales to refer the matter to an appropriate Solicitor with expertise in the interpretation and drafting of leases, who shall determine the matter in accordance with the provision of

paragraph (b) of this Clause 3.3. The Parties shall each be entitled to make written submissions to Senior Counsel during the period of five (5) Business Days following the Solicitor's appointment. The choice of a Solicitor shall be at the discretion of the President unless the parties otherwise agree. Pending the determination of the matter by the Solicitor, which shall be final and binding on the parties, the operation of paragraphs (a) and (b) in this Clause 3.3 shall not be affected, subject to the discretion of the Solicitor to extend the operation of his or her determination to any period during which paragraphs (a) and (b) of this Clause 3.3 would, but for the determination, have operated.

4. APPROVALS

4.1 Lessee must obtain

The Lessee must at the Lessee's cost obtain all necessary approvals:

- (a) for the use of the Property as a guest house, museum, rural uses, and ancillary uses including a restaurant, function centre, conference centre and as a public attraction allowing public access;
- (b) for such of the Lessee's Work as requires approval;
- (c) for the Lessee's Plan from:
 - (i) the Lessor; and
 - (ii) the Heritage Council.

4.2 Approval of Lessee's Plan

- (a) The Lessee must prepare and submit to the Lessor and the Heritage Council the Lessee's Plan which must be consistent with the Conservation Plan, the Contents Maintenance and Use Plan and the Deed of Gift. The Lessor and the Heritage Council will either approve the Lessee's Plan or notify the Lessee of changes that are required to conform to the Conservation Plan and/or the Deed of Gift prior to commencement of the Lessee's Work.
- (b) Changes required by any Authority to the Lessee's Plan and/or the Conservation Plan and/or the Contents Maintenance and Use Plan will be referred to the Lessor and the Heritage Council and the procedure outlined above in Clause 4.2(a) will apply until the Lessor approves the Lessee's Plan, the Conservation Plan and the Contents Maintenance and Use Plan and Development Approval is given based on the approved Lessee's Plan, Conservation Plan and Contents Maintenance and Use Plan.
- (c) The Lessor accepts no responsibility or liability for any errors, defects or omissions in the Lessee's Plan.

4.3 Minor Works

Upon entering into this Deed the Lessee shall be permitted to carry out such minor works on the Buildings as may be approved from time to time by the Lessor or the Consultant to protect the Buildings from deterioration.

5. CONDITION PRECEDENT

5.1 It is a condition precedent to the grant to the Lessee of the Lease that the Lessee comply with:

- (a) the Condition Precedent; and
- (b) this Clause 5.

5.2 (a) The Lessor must ensure that the Conservation Plan is completed without delay.

(b) The Lessee must in a timely manner and at its cost:

- (i) apply for Development Approval (and thereafter);
- (ii) make the Application; and
- (iii) comply with Clause 4.2.

(c) The Lessee must, subject to obtaining Development Approval (where necessary) undertake and complete the Lessee's Work:

- (i) in accordance with the Conservation Plan;
- (ii) in accordance with the Contents Maintenance and Use Plan;
- (iii) in accordance with any relevant Approval; and
- (iv) in accordance with the Lessee's Plan,

and do so to the satisfaction of the Lessor.

In the event of any conflict between the Conservation Plan, the Contents Maintenance and Use Plan, the Lessee's Plan and any relevant Approval, the Conservation Plan will take precedence followed by the Contents Maintenance and Use Plan, Approval and the Lessee's Plan, in that order.

5.3 Subject to Clause 5.4 if the Lessee does not satisfy the Condition Precedent within 24 months from the date of this Deed, the Lessor may by notice in writing to the Lessee terminate this Deed and on the giving of such notice the Lessee shall immediately vacate the Property and this Deed shall be at an end but without prejudice to any rights which have accrued to either party, by reason of the default of the other.

- 5.4 Notwithstanding Clause 5.3, the Lessee shall be entitled to an extension of the time allowed in Clause 5.3 to complete the Lessee's Work if the Conservation Plan is not approved by 31 December, 1999. The extension of time to which the Lessee shall be entitled shall be equal to the period between 31 December, 1999 and the date the Conservation Plan is approved and shall not be any longer. The Lessee shall not be entitled to any extension of time if it has been responsible for the delay. Any extension of time must be granted by the Lessor to the Lessee in writing.

6. THE LESSEE'S WORK, LESSEE'S PLAN AND APPROVALS

6.1 Lessee's Work to be in accordance with the Conservation Plan and the Contents Maintenance and Use Plan

The Parties acknowledge that a review of the conservation plan adopted by the Heritage Council of New South Wales in 1989 is currently being undertaken by the Consultant on behalf of the Heritage Office and the Lessee's Work to be carried out by the Lessee must be in accordance with the Conservation Plan, the Deed of Gift and the Contents Maintenance and Use Plan. The Lessee is entitled to discuss the preparation of the Conservation Plan with the Consultant. Upon completion of the Conservation Plan the Lessee will be entitled to a copy without delay.

6.2 Contents Maintenance and Use Plan

- (a) Prior to the commencement of the Lease:
- (i) The Lessor will notify the Lessee in writing of those Items of the furniture, equipment and fittings which are the Contents;
 - (ii) The Lessee will in consultation with the Lessor develop the Contents Maintenance and Use Plan for the use, security and maintenance of the Contents having regard to the significant historical value of the Contents.
- (b) The Lessee will at its own cost use, secure and maintain the Contents for the term of this Deed and for the term of the Lease in accordance with the Contents Maintenance and Use Plan approved by the Lessor.
- (c) The parties acknowledge that a number of items of particular heritage significance which form part of the Contents are not kept on the Property and the Lessee's obligations under sub-Clause 6.2(b), and Clause 7.1(e) do not extend to those items.
- (d) The Lessor reserves the right to remove any of the Contents for specific display purposes upon giving the Lessee one month's written notice specifying each item of the Contents to be removed and the date each item will be removed.
- (e) In exercising its rights under Clause 6.2(d) the Lessor must endeavour to minimise any disruption to the Lessee's quiet enjoyment of the Property and to the Lessee's business run from the Property.

6.3 Lessee's Contracts

The Lessee must only engage tradesman, builders and others to undertake the Lessee's Work and perform for them the Conservation Plan and the Contents Maintenance and Use Plan who are:

- (a) suitably qualified; *and*
- ~~(b) if required by the Lessor, approved by the Lessor, and~~
- (b) if required by the Lessor, approved by the Consultant.

Handwritten signature
RB

6.4 Obligations of the Lessee

The Lessee must bear the cost of the Lessee's Work including:

- (a) the appointment and removal of any builder, consultant or contractor;
- (b) all Approvals and consents of any Authority (in addition to the Approvals and consents referred to above);
- (c) the reasonable costs of the Lessor in giving approvals;
- (d) the management of contracts and the supervision, control and direction of any builder, consultant or contractor;
- (e) the supply to the Lessor of copies of drawings, specifications and other documentation which deal with the Lessee's Work and were requested by the Lessor;

6.5 No Variation without Lessor's Approval

The Lessee must not vary the Lessee's Plan and/or the Conservation Plan and/or the Contents Maintenance and Use Plan without the prior written consent of Lessor, which may be given or withheld in the absolute discretion of the Lessor, however, if the Lessee is of the bona fide view that any of those plans requires variation the parties hereto will meet and attempt to negotiate a mutually satisfying resolution of their difference of opinion on the Lessee's suggested changes.

6.6 Inspection and Testing by Lessor

The Lessor by its authorised representations shall be entitled to inspect the Property and the progress of the Lessee's Work every 3 months throughout the term of this Deed.

6.7 Make Good as Part of the Works

The Lessee shall make good at its costs any damage to surrounding roads and landscaped areas on the Land caused by the Lessee its servants and agents.

7. INSURANCE

7.1 Lessee's Insurances

From the date of this Deed the Lessee must in the joint names of itself and the Lessor ("the Insured") for their respective rights, interests and liabilities under this Deed and in respect of the Lessee's Work cause the following insurances to be effected and maintained:

(a) Contractor's All Risk

A Contractor's All Risk policy (or the equivalent) which must cover the improvements to be erected on the Land together with associated temporary works including materials incorporated or to be incorporated in the Lessee's Work which are the property of the Insured and for which the Insured is responsible and while on or adjacent to the Land for any loss, destruction or damage of or to the Property arising from a cause normally covered by such policy for at least the greater of the insurance value of the Property and the full reinstatement cost together with 10% of such reinstatement cost for fees payable to architects, engineers, quantity surveyors and other consultants to be engaged in the reinstatement of the Lessee's Work.

(b) Building Insurance

Insurance of the Buildings against loss, damage or destruction from all insurable risks reasonably required by the parties including but not limited to loss, damage or destruction by fire, lightning, storm and tempest for its reinstatement cost. Subject to Clause 7.3 as often as the Buildings shall be destroyed or damaged by fire, lightning, storm or tempest the sum which shall be recovered or received, shall be paid out in rebuilding or reinstating the Buildings or making good the damage and such rebuilding or reinstating or making good shall be carried out by the Lessee in accordance with the Conservation Plan and the Deed of Gift to the reasonable satisfaction of the Lessor and in case the moneys received in respect of such insurance shall be insufficient for that purpose the Lessee shall make good any difference out of its own moneys

(c) Public Risk Insurance

A public risk insurance policy for not less than \$10,000,000 or for such higher amount as the Lessor reasonably requires.

(d) Workers' Compensation

The Lessee will comply with all statutory requirements in relation to the worker's compensation insurance.

(e) Contents

Insurance of the Contents under a contents insurance policy (or the equivalent) covering the Contents in respect of any loss, theft, destruction or damage to the Contents for their full insurable value. If the Lessor does not notify the Lessee of the items which form the Contents by the date of this Deed then the Lessee shall be entitled to effect the contents insurance policy from the date such notification is given. As often as the

Contents shall be destroyed, damaged, lost or stolen the sum which shall be recovered or received shall be paid out in replacing, repairing or reinstating the Contents or making good the damage and such replacing, repairing or reinstating shall be carried out by the Lessee in accordance with the Conservation Plan, the Contents Maintenance and Use Plan and the Deed of Gift and in case the moneys received in respect of such insurance shall be insufficient for that purpose the Lessee shall make good any difference out of its own moneys.

7.2 Evidence of Insurance

The Lessee must punctually pay or cause to be paid the premiums necessary for effecting the insurances referred to in Clause 7.1 and keep the insurances current during the term of this Deed and must on request produce to the Lessor appropriate evidence of the currency of the relevant policies.

7.3 Obligations to Reinstate and Proceeds of Insurance

- (a) If the Buildings or any part are destroyed or damaged during the currency of this Deed and the Lessor requires the Buildings to be reinstated the Lessor shall give written notice to the Lessee to this effect and do so within 60 days of the damage and in this event the Lessee must reinstate the Buildings without delay out of any sum received from the insurance policy referred to in Clause 7.1(b) and otherwise shall make good any difference out of its own moneys.
- (b) If the Lessor does not because of the extent of the damage require the Buildings to be reinstated the Lessor shall give written notice to the Lessee to this effect and do so within 60 days of the damage and in this event the Lessee may upon the giving of 30 days' notice elect to replace or reinstate the Buildings (if necessary after making such a claim or claims under the insurance policies referred to in the previous clause) and reinstate or replace the damaged or destroyed Buildings. If the proceeds received are inadequate for this purpose the Lessee will contribute the difference between the insurance proceeds and the cost of reinstating or replacing the Buildings as nearly as practicable to their original condition.
- (c) If the Lessee elects not to replace or re-instate the Buildings under sub-Clause 7.3(b) then the Lessor may terminate this Deed and the Lessor shall be entitled to the sum of any insurance moneys recovered pursuant to Clause 7.1(b).

8. INDEMNITY

8.1 Lessee's Indemnity

The Lessee agrees to indemnify and will keep indemnified the Lessor against all claims, demands, suits, proceedings, losses, costs, expenses, penalties or damages which are brought, claimed, issued, or assessed against it as a result of a breach of the provisions of this Deed on the part of the Lessee

9. THE LEASE

9.1 Commencing Date of Lease

The Commencing Date of the Lease will be the date upon which the Lessor reasonably determines that the Lessee's Work has been completed in accordance with this Deed.

9.2 Lessee and Lessor to Execute Lease

- (a) The Lessee must execute the Lease at the same time as the Lessee executed this Deed and deliver it to the Lessor.
- (b) The Lease will be held in escrow by the Lessor pending satisfaction of the Condition Precedent and the performance by the Lessee of its obligations under this Deed and, subject thereto, executed by the Lessor as soon as practicable following completion of the Lease details in accordance with Clause 9.2(c).
- (c) Prior to execution by the Lessor the Lessor will attach all annexures and complete all blank details in the Lease including but not limited to:
 - (i) the Commencing Date determined in accordance with Clause 9.1
 - (ii) the Terminating Date being the date 40 years less one day after the Commencing Date;
 - (iii) the date of the Lease (which shall be the Commencing Date);
 - (iv) the Rent, including the commencing Rent, the date of the first Rent payment and Rent review dates which in the case of Market Rent Review dates will occur at 5 year intervals after the first Market Rent Review date; and
 - (v) all other relevant matters which are incidental thereto or flow therefrom or are otherwise necessary or appropriate,

and execute the Lease.

- (d) For the purpose of sub-Clause 9.2(iv), the date of the first Rent payment will be the date which is five years less one day from the date upon which the Conservation Plan is approved by the Heritage Council.
- (e) The Lessor shall lodge the Lease for registration as soon as practicable after completion of the details of the Lease in accordance with this Clause.

9.3 Operation of Lease

In no circumstance shall the Lease be binding on the Lessor until the Lessee's Work is complete to the reasonable satisfaction of the Lessor.

9.4 Occupation of the Property

The Lessee is entitled to occupy the Property for the following purposes:

- (a) to carry out the obligations of the Lessee under this Deed;
- (b) to secure and protect the Land and Buildings;
- (c) to administer any Licence including receiving and retaining any licence fees; and
- (d) for personal use and enjoyment

provided that nothing in this Clause shall be interpreted to derogate from the Lessor's rights of ownership.

10. RENT AND OTHER PAYMENTS

10.1 No licence fee payable

The Lessee shall be entitled to occupy the Land from the date of this Deed and shall not be required to make any payments to the Lessor for the right to do so other than as contained below.

10.2 Outgoings

- (a) The Lessee will from the Date of this Deed pay the Outgoings as and when they fall due for payment.
- (b) If any account for Outgoings is received by the Lessor it shall forward it to the Lessee for payment. If any outgoing is not paid by the Lessee then the Lessor may:
 - (i) submit the account to the Lessee for payment; or
 - (ii) pay the account itself and claim reimbursement from the Lessee. The Lessee will reimburse the Lessor within 30 days of a request for reimbursement.

10.3 Licences

- (a) The Lessee shall be entitled to:
 - (i) maintain any Licence and administer it and collect and account to itself for any licence fees it collects; or
 - (ii) enter into a new similar licence arrangement of a short term nature.
- (b) The Lessee must:

- (i) obtain the approval of the Lessor to the terms of any licence which differs from the existing Licence; and
- (ii) keep a record of all fees collected and, if required by the Lessor, make those records available to the Lessor.

10.4 Lessee to Pay Costs

The Lessee agrees to:

- (a) pay on demand the Lessor's expenses including reasonable legal fees costs and disbursements in respect of the preparation, negotiation, execution and registration of this Deed and the Lease;
- (b) pay on demand the stamp duty on this Deed and the Lease; and
- (c) pay the Lessor's costs upon default by the Lessee in the observance and performance of this Deed.

10.5 Rights not Assignable

- (a) Except in the case of death or incapacity of either of them, the Lessee shall not assign its interest or any part of it under this Deed.
- (b) In the case of death or incapacity of either Damien Michael Miller or Vicki Ann Burton Taylor the Lessee will be entitled to assign its interest or any part of it under this Deed if:
 - (i) the Lessee is either not in breach of this Deed or any breach has been waived or remedied; and
 - (ii) the Lessee complies with Clause 10.5(c).
- (c) Before any assignment pursuant to Clause 10.5(b), the Lessee will:
 - (i) demonstrate to the Lessor's reasonable satisfaction that the new lessee is respectable, responsible and solvent and capable of adequately complying with this Deed, the Lease and the Deed of Gift;
 - (ii) procure that the new lessee enters into a deed with the Lessor in a form reasonably required by the Lessor to observe and perform the obligations of the Lessee under this Deed and the covenants of the Lessee in the Lease;
 - (iii) comply and ensure that the new lessee complies with the Lessor's reasonable requirements in relation to documenting, stamping and registering the transaction; and
 - (iv) (if the Premises are licensed under the Liquor Act) demonstrate to the Lessor's reasonable satisfaction that the New Lessee and all persons who would have a relevant financial interest in the Licence if the assignment of this Deed or the

Lease is effected are approved by the licensing authorities as persons who are fit and proper to have such an interest; and if the licence is to be transferred to the New Lessee or its nominee that the Licensing Court of New South Wales has approved the transfer.

11. LESSEE'S DEFAULT

11.1 Events of Default

If the Lessee:

- (a) without reasonable cause suspends the Lessee's Work;
- (b) without reasonable cause fails to proceed with the Lessee's Work with reasonable diligence or in a competent manner;
- (c) refuses or persistently neglects to comply with any notice from the Lessor to make good any defects to the Land or the area surrounding the Land which has been damaged by it or its servants or agents or contractors;
- (d) commits a breach of any agreement, provision or stipulation contained in this Deed on the part of the Lessee to be performed or observed;
- (e) fails to comply with any condition of the Development Approval;
- (f) fails to effect and maintain the insurances which it is obliged to maintain under Clause 7;
- (g) has execution levied against any of its assets for an amount in excess of \$250,000; or
- (h) commits an Insolvency Event or an Insolvency Event occurs concerning the Lessee,

then, subject to Clause 11.2 the provisions of clauses 11.3 and 11.4 shall apply.

11.2 Opportunity to Rectify or Pay Compensation

Notwithstanding anything expressed or implied in this Deed, the Lessor will not determine or forfeit this Deed unless the Lessor shall have first given to the Lessee 30 days' written notice specifying the breach, default or non-observance alleged by the Lessor.

PROVIDED ALWAYS THAT:

- (a) in the case of a breach, default or non-observance remediable by payment of money, if the Lessee pays the Lessor within 30 days of service of such notice the money necessary to remedy such breach, default or non-observance;
- (b) in the case of a breach, default or non-observance remediable by means other than the payment of money, if the Lessee prior to expiration of the notice remedies the default or if it is not practicable to do so prior to expiration of the notice undertakes in writing to the Lessor to remedy the breach, default or non-observance and so remedies the same

within a reasonable time having regard to the nature and extent thereof so allowed by the Lessor; or

- (c) in the case of a breach, default or non-observance which cannot be remedied, if the Lessee prior to expiration of the notice pays to the Lessor an amount specified by the Lessor which the Lessor considers (acting reasonably) is adequate compensation,

THEN the Lessor shall not be entitled to rely upon the breach, default or non-observance set out in the notice to the Lessee as a ground for determination or forfeiture and this Deed shall continue in full force and effect as if no such breach, default, or non-observance had occurred.

11.3 Repudiation and Termination

Subject to Clause 11.2, should any Event of Default occur and the Lessee not rectify the default within the time allowed in Clause 11.2 or such further time as allowed to the Lessee to rectify default, the Lessor may in its absolute discretion:

- (a) treat such event as a repudiation of this Deed; and/or
- (b) terminate this Deed by notice to that effect to the Lessee; and/or
- (c) take such other action and pursue such other remedies as the Lessor may in its absolute discretion see fit.

In the circumstances referred to in paragraphs (a) and (b) the Lessee must vacate the Property and remove all its chattels and personal belongings.

11.4 Consequences of Default

Upon a repudiation or termination under Clause 11.3 then, without any notice to the Lessee:

- (a) any and all moneys paid to the Lessor by the Lessee, held by the Lessor on behalf of the Lessee or held by any other person on behalf of the Lessor and/or the Lessee pursuant to this Deed or any security provided to the Lessor by or on behalf of or at the request of or to the account of the Lessee held by the Lessor shall be absolutely forfeited; and
- (b) the Lessor shall be entitled to recover from the Lessee all past, present and future loss, damage and expense incurred or suffered or to be incurred or suffered by the Lessor; and
- (c) in the event that the Condition Precedent has not been completed in accordance with Clause 5, the Lessor shall not be obliged to grant the Lease to the Lessee in accordance with the provisions of this Deed and the Lessee shall not be entitled to require the grant to it of the Lease.

11.5 Non Waiver

The rights of the Lessor pursuant to clauses 11.3 and 11.4 may subject to Clause 11.2 be exercised by the Lessor at any time and at the absolute election of the Lessor. In the event that the Lessor postpones or in any way delays the exercise of its rights pursuant to clauses 11.3 and 11.4, no such postponement or delay shall be considered to be in any way a waiver of such rights and nor shall the Lessor be considered to be guilty of any delay, laches or acquiescence.

12. DISPUTE RESOLUTION

12.1 Dispute Resolution

If a dispute arises out of or relating to this Deed (excluding any dispute as to the proper construction of the terms of this Deed, breach or termination of this Deed or as to any claim in tort, in equity or pursuant to any statute) a party to this Deed may not commence any court or other proceedings relating to the dispute unless it has complied with the following paragraphs of this Clause 12 except where the party seeks urgent interlocutory relief.

12.2 Subject to Clause 12.3, a party to this Deed claiming that a dispute has arisen under or in relation to this Deed must give written notice to the party with which it is in dispute specifying the nature of the dispute.

On receipt of that notice, the parties must endeavour to resolve the dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or determination or similar techniques agreed by them.

If the parties do not agree within ten (10) Business Days of receipt of the notice (or such further period as agreed in writing by them) as to:

- (a) the dispute resolution technique and procedures to be adopted;
- (b) the timetable for all steps in those procedures; and
- (c) the selection and compensation of the independent person required for such technique,

the parties must mediate the dispute in accordance with the then prevailing rules of the Australian Commercial Disputes Centre. If any Party is not satisfied with the outcome of the mediation nothing precludes it from pursuing its rights in a court of law.

12.3 If a dispute arises which in the absolute discretion of the Lessor involves the obligations or duties of the Lessee under the Deed of Gift the Lessor may by notice, determine that Clause 12.2 does not apply.

13. NOTICES

13.1 Any notice or document to be given under this Deed can be given:

- (a) in any manner authorised by Section 170 of the Conveyancing Act, 1919;
- (b) by being left at or posted to:
 - (i) the address shown in Clause 13.3 of this Deed;
 - (ii) in the case of a corporation, at its registered office;
- (c) by facsimile transmission.

13.2 A notice or document will be regarded as being received:

- (a) in the case of posting, two business days after it is placed in the post; or
- (b) in the case of a facsimile transmission, when the whole notice or document has been transmitted from the sending machine and a transmission report has been produced by the sending machine unless the transmission is not received before 17.00 hours (recipients time) on a normal business day, in which case service will be deemed to be effected at 9.00 hours on the next business day.

13.3 A notice required to be given by a party may be given by:

- (a) in the case of the Lessor, the Lessor, the Lessor's delegate, the Lessor's Representative, or the Lessor's attorney or solicitor; and
- (b) In the case of the Lessee, Damien Michael Miller or Vicki Anne Burton-Taylor,

sent to the following addresses:

- (a) [Lessor] Level 11, 2-10 Wentworth Street, Parramatta, 2150;
- (b) [Lessee] PO Box 51, Exeter 2579, Lot 15 Elsemore Road, Exeter 2579.

and it must comply with this Clause 13.

14. INCONSISTENCY

To the extent that any of the provisions of this Deed are inconsistent with the Deed of Gift and/or the Conservation Plan and the Contents Maintenance and Use Plan then, in order of priority, the provisions of:

- (a) The Deed of Gift;
- (b) The Conservation Plan; and
- (c) The Contents Maintenance and Use Plan.

shall prevail.

15. GOODS AND SERVICES TAX

15.1 For the purposes of this clause:

- (a) "GST Bill" means the bill entitled "A New Tax System (Goods and Services Tax) Bill 1998" as published on 2nd December, 1998 and amended from time to time;
- (b) "GST, "Input Tax Credit" and "Taxable Supply" have the meaning given to those terms by the GST Bill.

15.2 Subject to Clause 15.3:

- (a) all payments to be made by the Lessee under this Deed (including, but not limited to, rent and outgoings (but excluding any GST forming part of those expenses incurred by the Lessor for which the Lessor can claim an Input Tax Credit because any such expense was consideration for a Taxable Supply to the Lessor)) are calculated without regard to GST; and
- (b) if any payment referred to in sub-Clause (b) is for a Taxable Supply by the Lessor, the amount of the payment shall be increased by the amount of GST imposed on that Taxable Supply.

15.3 If GST is imposed and:

- (a) by reason of the inclusion of Clause 15.2 in this Deed the Lessor would be liable to pay GST in respect of a supply of the Property prior to the date the Lessor would have been so liable had Clause 15.2 not been included in this Deed then the operation of paragraph 15.2 will be suspended and it shall have no effect until the date the Lessor would have been so liable had paragraph 15.2(b) not been included in this Deed.

- 15.4 If the Lessor becomes subject to any penalties or interest resulting from late payment of GST because of the Lessee's failure to comply with this clause, then the Lessee must pay on demand to the Lessor an additional amount equal to the amount of those penalties and interest.

16. GENERAL

The Deed is governed by the laws of New South Wales and the Commonwealth of Australia and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales.

17. MAINTENANCE SCHEDULE OF WORKS

The Consultant, at the Lessee's cost, will prepare a Maintenance Schedule of Works for the assistance of the Lessee prior to Completion of the Conservation Plan and the parties will cooperate to ensure this schedule is prepared with all reasonable expedition. The Lessor must approve the Maintenance Schedule of Works prior to the Lessee carrying out any work pursuant to the Maintenance Schedule.

EXECUTED as a Deed.

SIGNED SEALED AND DELIVERED)
BY THE MINISTER)
ADMINISTERING THE HERITAGE)
ACT, the Hon Dr ANDREW JOHN)
REFSHAUGE in the presence of)

.....
Signature of Witness

.....
Full Name of Witness

.....
Address of Witness

SIGNED SEALED and DELIVERED)
by the said DAMIEN MICHAEL)
MILLER in the presence of:)

.....
Signature of Witness

Damien Miller

.....
THOMAS - D. BOYCE

Full Name of Witness

.....
345 George Street Sydney

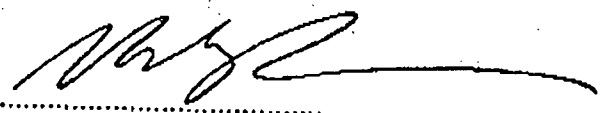
Address of Witness

SIGNED SEALED and DELIVERED
by the said VICKI ANNE BURTON-
TAYLOR in the presence of:

)
)
)



.....
Signature of Witness



.....
THOMAS D BOYCE

Full Name of Witness

.....
345 George Street Sydney

Address of Witness

