Form: 07SL
Licence: 039-103
Licensee: Minter Ellison

# SUBLEASE

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

AN894164A

**PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.**

**STAMP DUTY** Revenue NSW use only

(A) **HEAD LEASE** AE754036

(B) **TORRENS TITLE** Property leased
Folio Identifier 1/1057496 part being Levels 4 and 7 of Bond One, 20 Windmill Street, Sydney, Walsh Bay, NSW

(C) **LODGED BY**

| Document Collection Box | Name, Address or DX, Telephone, and Customer Account Number if any | CODE |
|---|---|---|
| 599D | **MinterEllison** Customer Account Number: 123438 S<br>1 Farrer Place, Sydney<br>Telephone (02) 9921 8888<br>Reference: [redacted]1217915 SWVU | SL |

(D) **SUBLESSOR** **National Mutual Life Nominees Pty Limited ABN 98 004 387 133**

The sublessor leases to the sublessee the property referred to above.

(E) Encumbrances (if applicable): .....

(F) **SUBLESSEE** **Newcastle Port Corporation ABN 50 825 884 846**

(G) **TENANCY:**

(H)
1. **TERM:** Five (5) years
2. **COMMENCING DATE:** 1 July 2019
3. **TERMINATING DATE:** 30 June 2024
4. With an **OPTION TO RENEW** for NA set out in clause NA of Annexure A
5. Together with and reserving the **RIGHTS** set out in clause No. NA of NA
6. Incorporates the provisions or additional material set out in **ANNEXURE(S) A, B, C, D & E** hereto.
7. Incorporates the provisions set out in NA
8. The **RENT** is set out in Item 1 of Annexure A

**DATE:** .....

(H) I certify that I am an eligible witness and that the lessor signed this dealing in my presence. [See note** below].

Certified correct for the purposes of the Real Property Act 1900 by the lessor.

**See Annexure A**

Signature of witness

Signature of sublessor

Name of witness

Address of witness

I certify that I am an eligible witness and that the lessee signed this dealing in my presence. [See note** below].

Certified correct for the purposes of the Real Property Act 1900 by the lessee.

**See Annexure A**

Signature of witness

Signature of sublessee

Name of witness

Address of witness

*Note: where applicable, the sublessor must complete the statutory declaration below.*

(J) **STATUTORY DECLARATION***

I

solemnly and sincerely declare that-

1. The time for the exercise of option to renew in expired sublease No. has ended; and
2. The sublessee under that sublease has not exercised the option.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Oaths Act 1900

Made and subscribed at in the State of New South Wales on

in the presence of of

☐ Justice of the peace (J.P. Number: ) ☐ Practising Solicitor

☐ Other qualified witness (specify)

≠ who certifies the following matters concerning the making of this statutory declaration by the person who made it:

1. I saw the face of the person *OR* I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering; and
2. I have known the person for at least 12 months *OR* I have confirmed the person's identity using an identification document and the document I relied on was a.....

Signature of witness: Signature of applicant:

* As the services of a qualified witness cannot be provided at lodgment, the declaration should be signed and witnessed prior to lodgment. ≠ If made outside NSW, cross out the witness certification. If made in NSW, cross out the text which does not apply.

***s117 RP Act requires that you must have known the signatory for more than 12 months or have sighted identifying documentation.*

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# Annexure A to Sublease

## Date

## Parties

| | |
|---|---|
| Name | **National Mutual Life Nominees Limited** |
| ABN | 32 006 787 720 |
| Short form name | **Landlord** |
| Notice details | 33 Alfred Street, Sydney NSW 2000 |

| | |
|---|---|
| Name | **National Mutual Funds Management Limited** |
| ABN | 98 004 387133 |
| Short form name | **Responsible Entity** |
| Notice details | 33 Alfred Street, Sydney NSW 2000 |

| | |
|---|---|
| Name | **Newcastle Port Corporation** |
| ABN | 50 825 884 846 |
| Short form name | **Tenant** |
| Notice details | Port Authority of New South Wales<br>Level 4, 20 Windmill Street \| Walsh Bay NSW 2000 Australia<br>PO Box 25, Millers Point \| NSW 2000 Australia |

## Reference Schedule

| | | |
|---|---|---|
| **Item 1** | **Rent** | $1,446,855.07 per annum GST exclusive |
| **Item 2** | **Day of month on which Rent instalments are due** | First |
| **Item 3A** | **Fixed Review Dates** | Date: On each anniversary of the Commencing Date.<br>Amount of review: 4.25%. |
| **Item 3B** | **Market Review Dates** | Not applicable |
| **Item 4** | **Outgoings Year** | 30 June |
| **Item 5** | **Tenant's percentage of Outgoings** | 19.13% |
| **Item 6** | **Cleaning Charge** | per month |
| **Item 7** | **Interest rate** | 2% above the Commonwealth Bank's Overdraft Reference Rate. |
| **Item 8** | **Public liability insurance** | $20 million |
| **Item 9** | **Permitted Use** | General commercial offices. |
| **Item 10** | **Building Hours** | 8.00am to 6.00pm Monday to Friday |

| | | |
|---|---|---|
| **Item 11** | **Base Building Configuration** | As show in the plan/s attached to this Sublease as Annexure E. |
| **Item 12** | **Address for service of notices** | **Landlord's address for service:**<br>National Mutual Life Nominees Pty Limited<br>33 Alfred Street<br>Sydney NSW 2000<br>Attention: The Company Secretary<br><br>with a copy to:<br><br>AMP Capital Investors Limited<br>33 Alfred Street<br>Sydney NSW 2000<br>Attention: The Property Manager, Bond One, 20 Windmill Street, Walsh Bay<br>**Tenant's address for service:**<br>Name: Newcastle Port Corporation<br>Address: Level 4, 20 Windmill Street \| Walsh Bay NSW 2000 Australia<br>PO Box 25, Millers Point \| NSW 2000 Australia<br>Facsimile: 02 9296 4742<br>Attention: Executive General Manager - Legal |
| **Item 13** | **Bank guarantee** | An amount equal to 6 months of Rent, Tenant's Contribution and Licence Fees (including GST). |
| **Item 14** | **Guarantor** | NA |
| **Item 15** | **Trustee, Constitution, Trust** | **Responsible Entity:** National Mutual Funds Management Limited ABN 20 783 965 630<br>**Custodian:** National Mutual Life Nominees Pty Limited<br>**Constitution:** The constitution dated 19 December 1985 establishing the Trust (as amended from time to time)<br>**Trust:** Wholesale Australian Property Fund which is a registered managed investment scheme ARSN 088 996 392 |

# Agreed terms

## 1. Definitions and interpretation

### 1.1 Definitions

The following definitions, together with those in the Reference Schedule, apply unless the contrary intention appears. Item numbers referred to are those in the Reference Schedule. Other definitions are on the cover sheet of this Sublease.

**Approved Codes of Practice** means Codes of Practice relating to workplace safety approved or taken to be approved under the WHS Act.

**Authority** means any government department, local council, government or statutory authority, public or private utility or other public or private body, which has jurisdiction, powers, duties or a right to impose a requirement (including a requirement that its consent be obtained) or charge a fee in connection with the Premises, the Building, the Services or the Land.

**Bank Guarantee** means an irrevocable and unconditional undertaking in favour of the Landlord which does not specify an expiry date or specifies an expiry date no earlier than three months after the Expiry Date and which is otherwise on terms acceptable to the Landlord (acting reasonably) by an Australian bank (or, at the Landlord's discretion, another financial institution) requiring the bank (or other financial institution) to pay on demand, whether by one or more requests, the amount in Item 13 (or any replacement or addition to it under clause 21) and is expressed as being provided as security for performance of the Tenant's obligations under this Sublease and the Car Park Licence.

**Base Building Configuration** means the nature and location of the items shown on the plans referred to in Item 11 and as detailed in the Specifications.

**Bond Store 1 Agreement to Lease** means the agreement to lease dated 19 June 2006 between Hickson Road Walsh Pty Limited ACN 117 539 538, MREEF Project Company No 25 Pty Limited ACN 117 477 451, Waterways Authority ABN 21 220 712 305, Walsh Bay Finance Pty Limited ACN 079 751 894, Mirvac (Walsh Bay) Pty Limited ACN 077 687 186 and Transfield (Walsh Bay) Pty Limited ACN 080 368 056.

**Building** means the commercial office building and all other improvements (other than the Tenant's Property) on the Land.

**Building Hours** means the hours in Item 10 as varied by the Landlord, acting reasonably, from time to time.

**Car Park Licence** means the car park licence between National Mutual as licensor and the Tenant as licensee and dated on or about the date of this Sublease in respect of car parking spaces located in the Building.

**Cleaning Charge** means the Landlord's reasonable cost of cleaning the Premises, the monthly amount of which the Landlord estimates at the Commencing Date to be the amount set out in Item 6, and as varied under this Sublease.

**Commencing Date** means the commencing date specified on the cover sheet of this Sublease.

**Common Areas** means those parts of the Land or the Building which the Landlord intends for common use.

**Consent Authority** means the Minister for Planning, and where the context so requires, means the Heritage Council, the Council of the City of Sydney or its successors and Sydney Harbour Foreshore Authority.

**Constitution** means the trust deed in Item 15 (as amended from time to time).

**Contractor** means Walsh Bay Finance Pty Limited ACN 079 751 894, Mirvac (Walsh Bay) Pty Limited ACN 077 687186 and Transfield (Walsh Bay) Pty Limited ACN 080 368 056.

**Current Annual Rent** has the meaning given in clause 3.11.

**Dispute Notice** has the meaning given in clause 3.4.

**Expiry Date** means the terminating date specified on the cover sheet of this Sublease or the end of any period of holding over under clause 15, as appropriate.

**GST Amount** means, in relation to a Taxable Supply, the amount of GST payable in respect of that Taxable Supply.

**GST Law** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999*, or, if that Act does not exist, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act.

**Guarantor** means each person named in Item 14.

**Hazardous Materials** means any substance, gas, liquid, chemical, mineral or other physical or biological matter which is or may become toxic, flammable or inflammable.

**Head Landlord** means the Maritime Authority of New South Wales a body corporate constituted under the *Ports and Maritime Administration Act 1995*.

**Head Lease** means the lease between the Head Landlord as 'lessor' and the Landlord as 'lessee' to be entered into pursuant to the Bond Store 1 Agreement to Lease.

**Incentive** means anything the Landlord gives to or at the direction of the Tenant to induce it to sign this Sublease, including any inducement, incentive or concession of any kind however named or structured, including any premium or capital payment, any period of abatement or reduction of rent or other payments or the payment of or contribution to the cost of fitout of the Premises.

**Incentive Deed** means the deed dated on or about the date of this Sublease between the Landlord and the Tenant entered into in connection with the parties' entry into this Sublease.

**Input Tax Credit** has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.

**Insolvency Event** means the happening of any of these events:

(a) an order is made that a body corporate be wound up;

(b) an order is made appointing a liquidator or provisional liquidator in respect of a body corporate, or one of them is appointed, whether or not under an order;

(c) a body corporate is deregistered or notice of intention to procure or an application for deregistration of the body corporate is made by the body corporate or by the Australian Securities and Investments Commission;

(d) except to reconstruct or amalgamate while solvent on terms approved by the Landlord (acting reasonably), a body corporate enters into, or resolves to enter into, a scheme of arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them;

(e) a body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent on terms approved by the Landlord (acting reasonably) or is otherwise wound up or dissolved;

(f) a body corporate is or states that it is insolvent;

(g) as a result of the operation of section 459F(1) of the *Corporations Act 2001*, a body corporate is taken to have failed to comply with a statutory demand;

(h) a body corporate is, or makes a statement from which it may be reasonably deduced by the Landlord that the body corporate is, the subject of an event described in section 459C(2)(b) or section 585 of the *Corporations Act 2001*;

(i) a body corporate takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to a body corporate;

(j) a person becomes an insolvent under administration as defined in section 9 of the *Corporations Act 2001* or action is taken which could result in that event; or

(k) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction and including deregistration or dissolution.

**Institute** means the Australian Property Institute Inc. (New South Wales Division).

**Insured Risk** means fire, storm, tempest, flood, earthquake, lightning, explosion or concussion from explosion, impact from vehicles or aircraft and other aerial advices and articles dropped from them, riot, civil commotion and malicious damage, water damage (including sprinkler leakage, rain water, bursting or overflowing of water tanks, apparatus or pipes), act of God and other disabling causes.

**Land** means the land described on the cover sheet, on which the Building is situated and any other land which the Landlord notifies the Tenant forms part of the Land which the Landlord develops by way of erecting further improvements or extensions as part of the Building and which the Landlord manages or operates in conjunction with the improvements from time to time existing on the land described on the coversheet.

**Landlord's Employees and Agents** means each of the Landlord's employees, officers, agents, contractors and invitees.

**Landlord's Obligations** means those obligations of the Landlord which only the Landlord can perform or which the Landlord is required by law or otherwise to perform as a consequence of the Lessor being:

(a) the owner of the Premises; and

(b) the custodian appointed by the Responsible Entity.

**Landlord's Property** means all plant, equipment, fixtures, fittings, furniture, furnishings and other property which the Landlord provides in the Premises.

**Lettable Area** means the net lettable area calculated by the Landlord's surveyor using the 1997 edition of the Property Council of Australia Limited's method of measurement for commercial office areas.

**Licence Fee** means the licence fee payable by the Tenant as licensee under the Car Park Licence.

**Loss of Bargain Damage** means the amount being the difference between:

(a) all money which would have been received or recovered by the Landlord from the Tenant under this Sublease for the period of the Term remaining after termination of this Sublease had it been fully performed by the Tenant; and

(b) the money which the Landlord, using its reasonable endeavours, is likely to receive for the Premises from a replacement tenant for the period of the Term of this Sublease remaining after the termination of this Sublease after allowing for a reasonable period of vacancy during the letting up period and any abatement, concession, incentive or inducement in any form which the Landlord would reasonably need to provide in order to obtain that money,

where in each case that money is discounted back to a net present value calculated at the date of termination of this Sublease by applying a discount rate equivalent to the rate (expressed as a percentage per annum) of the Commonwealth Bond 10 year Indicator Rate published in the Australian Financial Review or elsewhere on the date of that termination or, if that rate is not published at that date, by applying a published rate which in the opinion of the Valuer referred to in clause 17.5 (acting as an expert and not as an arbitrator) equates most closely to it.

**Make Good** means to repair and make good the Premises to the Landlord's reasonable satisfaction, including to:

(a) remove from the Premises, the Building and the Land all fixtures, fittings, loose furnishings, personal belongings, cables, conduits and wires brought onto the Premises and/or installed by the Tenant or the Tenant's Employees and Agents or by the Landlord (or a predecessor) on behalf of the Tenant and Tenant's Property required by the Landlord to be removed; and

(b) properly repair any damage caused by the removal of things referred to in paragraph (a) of this definition from the Premises, the Building and the Land; and

(c) reinstate the structure of any part of the Premises which has been penetrated by the Tenant or the Tenant's Employees and Agents including, if applicable, removal of internal stairs and reinstatement of the slab; and

(d) reinstate the Premises and the Services benefiting the Premises to the Base Building Configuration and leave them in good repair and condition, having regard to the Tenant's obligations under this Sublease, clean and free from rubbish and in a safe condition; and

(e) put the ceiling grid, supports and ceiling tiles into good repair and condition having regard to their condition at the Commencing Date; and

(f) subject to fair wear and tear:

(i) replace any damaged carpet and remove or replace other non-carpet floor coverings as required by the Landlord; or

(ii) if the Landlord does not require it to be removed or replaced, put the carpet and other floor coverings in good repair and condition, including by replacing any cut out areas,

with new carpet and other floor coverings approved by the Landlord which is of a standard not less than and not higher than the standard of the carpet and other floor coverings then provided by the Landlord to premises in the Building; and

(g) thoroughly clean the Premises, professionally steam clean the carpet or other floor coverings, professionally clean all light fittings, replace all defective light globes and remove all rubbish, waste and materials brought onto or left in or about the Premises, the Building or the Land by the Tenant or the Tenant's Employees and Agents; and

(h) wash down the inside surfaces of the Premises; and

(i) paint, stain, wallpaper or otherwise treat all surfaces inside the Premises in the same way that those surfaces were painted, stained, wallpapered or otherwise treated when last redecorated with the Landlord's approval, or if the Premises have not been redecorated with the Landlord's approval, then as they were at the Commencing Date; and

(j) replace curtains, blinds and other furnishings and decorations which are, in the Landlord's opinion, acting reasonably, worn or damaged beyond fair wear and tear.

**Market Review Date** means each date in Item 3B.

**Master Plan Approval** means the application for development approval (Ref No DA 60/97) and the determination issued by the Consent Authority dated 20 August 1998, as modified on 15 January 1999 and as amended from time to time 'by any Authority.

**Outgoings** means all amounts paid or payable by the Landlord for an Outgoings Year in connection with the Land or the Building (other than the cost of capital expenditure or structural works), including:

(a) rates, land taxes (calculated on the basis that the Land is the only land owned by the Landlord and is not subject to a trust) and other charges imposed by any Authority and levies and charges imposed under strata, community title or similar legislation and levies imposed by the Precinct Management Agreement together with any interest, fines and penalties in connection with any of them; and

(b) taxes (except income or capital gains tax), levies, imposts, deductions, charges, withholdings and duties imposed by any Authority; and

(c) insurance which the Landlord reasonably considers is appropriate (including for loss of rent) and insurance which the Landlord is obliged to effect under clause 5.1 of the Head Lease; and

(d) cleaning the Land and the Building (except for those parts which are let) and keeping them free of vermin and refuse and supplying items usually supplied in washrooms and toilets; and

(e) indoor and outdoor gardening and landscaping of the Building and areas near it; and

(f) building staff, caretaking services, security and regulating traffic; and

(g) management and administration; and

(h) supplying, maintaining, repairing and replacing Services and upgrading them to comply with the requirements of Authorities and all laws or to satisfy the requirements of the Landlord; and

(i) charges for the supply of Services which are not separately metered to an occupier, including usage charges; and

(j) repairs, redecoration and maintenance which no occupier is obliged to do; and

(k) maintenance of the Building in a manner required under the Head Lease and in accordance with the Precinct Management Agreement; and

(l) the provision and upkeep of signs and directory boards and information systems; and

(m) other things including services now or in the future provided by the Landlord for the use or benefit of occupants of the Building; and

(n) the cost of auditing the amount of Outgoings for an Outgoings Year.

For the avoidance of doubt, Outgoings do not include:

(o) costs incurred to maintain the structural integrity of the Building or other costs of a capital nature;

(p) leasing agents fees;

(q) costs which are otherwise recoverable from any third party or insurer;

(r) interest charges, fines and damages imposed on or incurred by the Lessor in connection with its failure to pay any outgoings by the due date;

(s) any amounts which are recovered under a guarantee or warranty by a supplier or manufacturer (provided, however, that the Landlord is not required to enforce any guarantee or warranty if the relevant amounts are recoverable as a result of the act or omission of the Tenant); or

(t) any amounts which are payable by the Tenant under any other provision of this Lease.

If (and to the extent that) a particular cost or expense has been taken into account in the calculation or determination of Outgoings under any of the component definitions, that cost or expense must not be taken into account in the calculation or determination of Outgoings under any of the other component definitions.

If the Building or the Land has sections which are used for purposes in addition to commercial office premises, then the Landlord must (acting reasonably) apportion which proportion of the Outgoings will be referrable to the section to which the Premises belong and this amount is to be the amount represented by 'A' in the definition of Tenant's Contribution.

**Outgoings Year** means the 12 month period ending on the date specified in Item 4 in each year or on another day specified in a notice which the Landlord gives to the Tenant.

**Permitted Use** means the use in Item 9.

**Pollution Control Legislation** means the requirements of all laws (whether Commonwealth, State or common law), regulations or rulings concerning environmental matters including but not limited to the laws, regulations, rulings and standards concerning pollution, waste disposal, toxic and hazardous substances and resource allocation.

**Precinct** means the area known as the Walsh Bay precinct including Wharf 4/5 and Pier 1, as shown on the Precinct Plan.

**Precinct Management Agreement** means the precinct management agreement entered into in respect of the Precinct for the management and responsibility for shared facilities and shared property within the Precinct and which contains rules concerning behaviour of occupants in the Precinct and standards for architecture, landscaping, pest-eradication and other matters in the Precinct provided to the Tenant on or about the date of this Sublease.

**Precinct Plan** means the precinct plan annexed to this Sublease as Annexure C.

**Premises** means (except when measuring the Lettable Area) that part of the Building described as the premises on the cover sheet of this Sublease, the boundaries of which are:

(a) the inside surface of the walls (under any paint or wall covering); and

(b) the lower surface of the soffit (above any false or suspended ceiling); and

(c) the upper surface of the floor (under any floor covering).

The Premises include the Landlord's Property.

**Principal Contractor** has the meaning given to that expression in the WHS Act.

**Redevelopment Area** means the whole of the area to be developed at Walsh Bay being part Lot 1 in DP812925, Lot 7 in DP1018716, Lots 17 to 31 in DP1035380, Lots 1, 2 and 10 in DP737193 and Lots 13, 14, 15 and 16 in DP737191.

**Reference Schedule** means the reference schedule of this Sublease.

**Rent** means the yearly amount in Item 1 as varied under this Sublease.

**Rent Day** means the Commencing Date and, for each subsequent month, the day in Item 2.

**Responsible Entity** means the corporation in Item 15.

**Review Notice** has the meaning given in clause 3.1.

**Rules** means the rules of the Building set out in Annexure B as varied or added to under this Sublease.

**Services** means services (such as water, sewerage, drainage, gas, electricity, communications, fire fighting, air conditioning, lifts and escalators) to or of the Building or any premises in it or the Land, which is provided by Authorities, the Landlord or any person authorised by the Landlord and includes all plant and equipment in connection with them.

**Specifications** means the base building specifications attached to this lease as Annexure D.

**Taxable Supply** has the meaning given by the GST Law, excluding the reference to section 84-5 of the *A New Tax System (Goods and Services Act) 1999*.

**Tenancy Design and Installation Guidelines** means the design brief included in the Tenancy Fitout Guidelines provided to the Tenant on or about the date of this Sublease.

**Tenant's Business** means the business carried on from the Premises.

**Tenant's Contribution** means for an Outgoings Year:

$$\frac{TP \times N \times A}{Y}$$

where:

TP = the percentage in Item 5 as varied under this Sublease;

N = the number of days of the Term in that Outgoings Year;

A= the Outgoings for that Outgoings Year; and

Y = the number of days in that Outgoings Year.

**Tenant's Employees and Agents** means each of the Tenant's employees, officers, agents, contractors and invitees.

**Tenant's Property** means all property on the Premises which is not Landlord's Property or Services.

**Term** means the period from and including the Commencing Date to and including the Expiry Date.

**Third Party Work** means contractors or others undertaking Work in the Premises.

**Trust** means the trust described in Item 15 established under the Constitution.

**Valuer** means a person nominated in writing by the president (or other principal officer for the time being) of the Institute in accordance with clause 3.6 who, as at the date of the nomination, must:

(a) have practised as a valuer for not less than 5 years in the Central Business District of Sydney;

(b) be a member of the Institute; and

(c) be registered to practise as a valuer of the kind of premises for which rent review is required under this Sublease.

**WHS Act** means the *Work Health and Safety Act 2011* (NSW).

**WHS Regulations** means the *Work Health and Safety Regulations 2017* (NSW).**Work** means any work in relation to the Premises which requires the appointment of a Principal Contractor.

**Worker** has the same meaning as in the WHS Act.

### 1.2 Interpretation

Unless the contrary intention appears:

(a) the singular includes the plural and vice versa;

(b) person includes a firm, a body corporate, an unincorporated association or an Authority;

(c) an agreement, representation or warranty:

(i) in favour of two or more persons, is for the benefit of them jointly and severally; and

(ii) on the part of two or more persons, binds them jointly and severally; and

(d) a reference to:

(i) this Sublease in the cover sheet, any Annexure or schedule to this Sublease is a reference to the lease constituted by the cover sheet and each of those annexures and schedules; and

(ii) a person includes the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns; and

(iii) a document includes any variation or replacement of it; and

(iv) a law includes regulations and other instruments under it and amendments or replacements of any of them; and

(v) a thing includes the whole and each part of it collectively and each of them individually; and

(vi) a group of persons includes all of them collectively, any two or more of them collectively and each of them individually; and

(vii) the president of a body or Authority includes any person acting in that capacity; and

(viii) Guarantor is a reference to all of the persons named as Guarantor jointly and each of them severally. An agreement, representation, warranty or indemnity on the part of the Guarantor binds the persons named as Guarantor jointly and each of them severally; and

(e) including (in any form) or such as when introducing a list of items does not limit the meaning of the words to which the list relates to those items or to items of a similar kind.

## 2. Rent

### 2.1 Payment of Rent

The Tenant must pay the Rent by equal monthly instalments in advance on each Rent Day.

### 2.2 Broken periods

If an instalment is for a period of less than one month, then that instalment is that proportion of one twelfth of the Rent which the number of days in the period bears to the number of days in the month in which that period begins.

### 2.3 Fixed Rent Review

If dates and amounts or percentages are set out in Item 3A, then the Rent increases from and including each of those dates by the amount or the percentage set out against the date.

### 2.4 Reduced Rent

Whilst Newcastle Port Corporation ABN 50 825 884 846 is the tenant, the Tenant's obligation to pay Rent will be satisfied by the Tenant paying an amount calculated in accordance with the following formula:

$$R - (\$32.64 \, x \, LAP)$$

where:

R = the Rent; and

LAP = the Lettable Area of the Premises.

## 3. Market Rent Review

### 3.1 Landlord's notice

At any time not earlier than 18 months before the Market Review Date, the Landlord may give the Tenant a notice stating the Landlord's assessment of the Current Annual Rent of the Premises as at the relevant Market Review Date (**Review Notice**). Time is not of the essence in relation to the giving of the Review Notice which may be given at any time.

### 3.2 Tenant's Notice

If the Landlord fails to give the Tenant a Review Notice by the relevant Market Review Date, the Tenant may notify the Landlord in writing that the Tenant requires the Landlord to provide the Tenant within a Review Notice (**Tenant's Notice**). The Landlord must provide the Tenant with a Review Notice within one month after receipt of the Tenant's Notice.

### 3.3 Parties to negotiate

During the period of one month after service by the Landlord on the Tenant of a Review Notice, the Landlord and the Tenant must use all reasonable endeavours in good faith to attempt to reach an agreement in relation to the Rent to apply from the relevant Market Review Date and, in particular, must meet, disclose and discuss all relevant issues and comparable evidence of current market rental value. The parties must take into account the criteria contained in clause 3.11 which apply at that particular Market Review Date.

### 3.4 Tenant's Dispute Notice

If the Landlord and the Tenant do not reach agreement in relation to the Rent to apply from the relevant Market Review Date within the period of one month after service by the Landlord on the Tenant of a Review Notice or if the Landlord fails to serve a Review Notice in accordance with clause 3.2, the Tenant may give the Landlord a notice requiring the Current Annual Rent of the Premises as at the relevant Market Review Date to be determined in accordance with clause 3.6 (**Dispute Notice**), such notice to be given within one month after the expiry of the one month period referred to in this clause 3.4 or the one month period referred to in clause 3.2, as applicable (in which regard time shall be of the essence).

### 3.5 Failure to give Dispute Notice

If the Tenant does not give the Landlord a Dispute Notice on time, the Rent payable from the relevant Market Review Date is the amount stated in the Review Notice.

### 3.6 Appointment of Valuer

If the Tenant gives to the Landlord a Dispute Notice strictly in accordance with clause 3.4, either the Landlord or the Tenant may request the president (or other principal officer for the time being) of the Institute to nominate in writing a Valuer who shall make a final determination of the Current Annual Rent of the Premises as at the relevant Market Review Date.

### 3.7 Valuer's Determination

(a) The Valuer shall act as an expert and not as an arbitrator.

(b) The Valuer's determination made in accordance with clause 3.6 shall be final and binding on the parties to this Sublease except in the event of manifest error.

(c) The Valuer must complete the determination and inform the Landlord and the Tenant of it in writing (with reasons) within one month (or such other period as may be agreed in writing by the Landlord and the Tenant) after the date of nomination of the Valuer.

### 3.8 Consequences of any failure by Valuer

If a Valuer:

(a) fails to accept a nomination; or

(b) fails to determine the Current Annual Rent of the Premises as at the relevant Market Review Date within one month (or such other period as may be agreed in writing by the Landlord and the Tenant) after the date of nomination of the Valuer; or

(c) becomes incapacitated or dies; or

(d) resigns as Valuer,

either the Landlord or the Tenant may request the president (or other principal officer for the time being) of the Institute to nominate in writing another Valuer to make a final determination of the Current Annual Rent of the Premises as at the relevant Market Review Date.

### 3.9 Costs of Rent Determination

The Landlord and the Tenant shall bear equally the total costs of the determination of the Current Annual Rent of the Premises at the Market Review Date.

### 3.10 Rent Pending Determination

If the Current Annual Rent of the Premises as at the relevant Market Review Date is not determined until after that Market Review Date:

(a) on and from the relevant Market Review Date, the Tenant shall pay the monthly instalments of Rent payable immediately prior to the relevant Market Review Date until the Current Annual Rent of the Premises as at the relevant Market Review Date has been determined and those payments shall be made in accordance with the provisions of clauses 2.1 and 2.2; and

(b) on the first Rent Day after the Rent is agreed or determined under this clause 3.10, the Tenant must pay the Landlord (or the Landlord must credit the Tenant with) the difference between what the Tenant has paid on account of Rent under paragraph (a) and the Rent for the period from and including the relevant Market Review Date to but excluding that Rent Day.

### 3.11 Meaning of Current Annual Rent

**Current Annual Rent** of the Premises is the current annual market rental value of the Premises on the relevant Market Review Date determined on the following basis:

(a) taking into account:

(i) current annual rents for comparable premises both within and outside the Building whether those rents arise from Jetting vacant space, renegotiating rent on the expiry or termination of a previous lease or from rent reviews, taking into account by way of reduction from the rent reserved by a lease of comparable premises, the annual value of any incentive, inducement, concession or benefit used to secure the tenant to lease those premises; and

(ii) the provisions of this Sublease and in particular any liability on the part of the Tenant to pay the Tenant's Contribution and the period of time until the next Market Review Date; and

(iii) the Permitted Use;

(b) but take no account of:

(i) the value of any goodwill attributable to the Tenant's Business and any improvements or fixtures erected or installed at the Tenant's expense which the Tenant is permitted or required to remove at the termination of this Sublease; and

(ii) any deleterious condition of the Premises if that condition results from any breach of this Sublease by the Tenant; and

(iii) whether the Tenant leases or occupies more than one lettable area in the Building or whether the Premises constitute a whole floor or more than one floor in the Building; and

(iv) the current annual rent for particular comparable premises if, in the opinion of the Valuer, the rental payable for those premises is abnormal, or unrealistic, or otherwise does not reflect the current rental value of those premises having regard to conditions prevailing in the relevant market at the Market Review Date.

### 3.12 Rent never to decrease

Despite anything in this Sublease (including this clause 3.12), the Rent from and including the relevant Market Review Date is to be the higher of:

(a) the Rent immediately before the relevant Market Review Date; and

(b) the amount determined under this clause 3.

## 4. Outgoings and other payments

### 4.1 Tenant's percentage

The parties acknowledge that the Tenant's percentage of Outgoings specified in Item 5 was calculated as follows:

(a) for any parts of the Premises which are on a floor not containing other tenancies, the proportion (expressed as a percentage) that the Lettable Area of the Premises on those floors bears to the Lettable Area of the Building; and

(b) for any parts of the Premises which are on a floor containing other tenancy areas, the proportion 'P' (expressed as a percentage) in the following formula:

$$P = \frac{A}{B} x \frac{100}{1} x \frac{C}{D}$$

where:

A = the Lettable Area (assuming a single tenancy) of the relevant floor;

B = the Lettable Area of the Building;

C = the Lettable Area of the Premises on the relevant floor; and

D = the Lettable Area of all tenancies (including the Premises) on the relevant floor (ie excluding Common Areas).

### 4.2 Tenant's Contribution to Outgoings

The Tenant must pay the Tenant's Contribution for each Outgoings Year within 14 days after notice is given under clause 4.6.

### 4.3 Payments on account of Tenant's Contribution

The Landlord must give the Tenant a notice for each Outgoings Year stating the Landlord's estimate of the Outgoings and the Tenant's Contribution for that Outgoings Year. The Landlord may revise that estimate at any time.

### 4.4 Payment by instalments

If the Landlord gives a notice under clause 4.3, the Tenant must pay instalments in advance on each Rent Day on account of the Tenant's Contribution. Each instalment is the Landlord's

estimate of the Tenant's Contribution for the Outgoings Year divided by the number of Rent Days (excluding the Commencing Date) in that Outgoings Year.

### 4.5 Subsequent Outgoings Years

In each Outgoings Year until the Landlord gives the Tenant a notice of the Landlord's estimate for the current Outgoings Year, the Tenant must pay on each Rent Day, on account of the Tenant's Contribution, an instalment equal to that payable on the previous Rent Day.

### 4.6 Statement of actual Outgoings and audit

As soon as possible after the end of an Outgoings Year, the Landlord must give to the Tenant an audited statement giving reasonable details of the actual Outgoings.

### 4.7 Adjustments

On the next Rent Day after the Landlord gives the Tenant a statement of actual Outgoings, the Tenant must pay the Landlord (or the Landlord must credit the Tenant with) the difference between what the Tenant has paid on account of the Tenant's Contribution for the Outgoings Year to which the statement applies and what the statement says is payable.

### 4.8 Change of Lettable Area

(a) If the Landlord, acting reasonably, is satisfied that the Lettable Area of the Building, the Premises or the floor on which the Premises are situated has changed, or the calculation of the Tenant's percentage of Outgoings specified is incorrect, then the Landlord must change the percentage in Item 5 in accordance with clause 4.8(b) by giving the Tenant a notice that the percentage is changed and from what date.

(b) If the Lettable Area of the Building changes, then the percentage in item 5 is to be:

(i) for any parts of the Premises which are on a floor not containing other tenancies, the proportion (expressed as a percentage) that the Lettable Area of the Premises on those floors bears to the changed Lettable Area of the Building; and

(ii) for any parts of the Premises which are on a floor containing other tenancy areas, the proportion 'P' (expressed as a percentage) in the following formula:

$$P = \frac{A}{B} x \frac{100}{1} x \frac{C}{D}$$

$$P = A x 100 x C$$

where:

A= the Lettable Area (assuming a single tenancy) of the relevant floor;

B = the changed Lettable Area of the Building;

C = the Lettable Area of the Premises on the relevant floor; and

D = the Lettable Area of all tenancies (including the Premises) on the relevant floor (ie excluding Common Areas).

### 4.9 Services outside hours

If, at the Tenant's request, the Landlord makes Services available to the Land, the Building or the Premises outside of the Building Hours the Tenant must pay the Landlord's reasonable costs, charges and expenses of making the Services available within 10 Business Days after the Landlord asks the Tenant for them.

### 4.10 Cleaning Charge

The Tenant must pay the Cleaning Charge in advance to the Landlord on each Rent Day. If any period between Rent Days (or between the last Rent Day and the Expiry Date) is less than a month, the Tenant must pay that proportion of the Cleaning Charge which the number of days in that period bears to the number of days in the month in which that period begins.

### 4.11 Changes in Cleaning Charge

If the Landlord's costs of making a cleaning service available to the Premises and removing refuse from them changes, then the Landlord may give a notice to the Tenant informing it of the changed Cleaning Charge and the Rent Day from which it is payable. The Tenant must pay the changed Cleaning Charge from that Rent Day.

### 4.12 Difference to be adjusted

If the Rent Day from which the changed Cleaning Charge applies is before the date the Tenant receives the Landlord's notice, then on the next Rent Day after it receives the notice the Tenant must pay the Landlord, or the Landlord must credit the Tenant with, the difference between what the Tenant has paid as Cleaning Charge from and including the Rent Day from which the changed Cleaning Charge applies to but excluding the next Rent Day after the Tenant receives the notice and what the Tenant should have paid.

### 4.13 Tenant to pay utilities

The Tenant must pay:

(a) all charges for Services connected to the Premises (if separately metered) to the proper Authorities;

(b) all charges for Services connected to the Premises (if not separately metered) to the Landlord, as reasonably determined and notified by the Landlord.

## 5. Payment requirements

### 5.1 Method of payment

The Tenant must make payments under this Sublease to the Landlord (or to a person nominated by the Landlord in a notice to the Tenant) by direct credit (electronic transfer) without set-off, counterclaim, withholding or deduction.

### 5.2 No demand

The Landlord need not make demand for any amount payable by the Tenant unless this Sublease says that demand must be made.

### 5.3 Rent Day

If the Tenant must pay an amount on the next Rent Day and there is no next Rent Day, then the Tenant must pay that amount within seven days after the Landlord demands it.

### 5.4 Expiry or termination

Expiry or termination of this Sublease does not affect the Tenant's obligations to make payments under this Sublease for periods before then.

### 5.5 GST

(a) Capitalised expressions which are not defined in this Sublease but which have a defined meaning in the GST Law have the same meaning in this clause.

(b) If GST is payable on a Taxable Supply made under, by reference to or in connection with this Sublease, the party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration. This clause does not apply to the extent that the Consideration for the Taxable Supply is expressly stated to be GST inclusive.

(c) Any reference in the calculation of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability. A party will be assumed to have an entitlement to a full Input Tax Credit unless it demonstrates otherwise prior to the date on which the Consideration must be provided.

(d) The GST Amount is payable on the later of:

(i) the first date on which all or any part of the Consideration for the Taxable Supply is provided; and

(ii) the date seven days after the date on which an Invoice is issued in relation to the Taxable Supply.

(e) This clause will continue to apply after expiration or termination of this Sublease.

### 5.6 Interest on overdue money

If the Tenant does not pay any amount payable by it under this Sublease on time, it must pay interest on that amount on demand by the Landlord from when it becomes due for payment until it is paid in full. The Tenant must pay accumulated interest at the end of each month without demand. Interest is calculated from the due date for payment on daily balances at the rate set out in Item 7.

## 6. Insurances

### 6.1 Tenant to take out insurance

The Tenant must:

(a) in connection with the Premises, effect no later than the Commencing Date and maintain throughout the Term with independent and reputable insurers and on terms approved by the Landlord (who may not unreasonably withhold its approval) in the name of the Tenant:

(i) public liability insurance for at least the amount in Item 8 in respect of each occurrence (as varied by notice from time to time from the Landlord (acting reasonably) to the Tenant); and

(ii) insurance for an amount equal to the value of the Tenant's Property; and

(iii) workers compensation insurance; and

(iv) other insurances which are required by law; and

(b) on each renewal date of the insurances required to be effected under clause 6.1(a) and otherwise when asked to do so, give the Landlord evidence that it has complied with clause 6.1(a) and, if requested by the Landlord, do all things reasonably required to assist the Landlord in any review of insurance arrangements undertaken by or on behalf of the Landlord; and

(c) notify the Landlord if:

(i) an insurance policy required by this clause 6.1 is cancelled; or

(ii) an event occurs which may give rise to a claim under or which may affect rights under an insurance policy in connection with the Premises, the Building or property in them; or

(iii) the Tenant becomes aware that the insurer is or may be the subject of an Insolvency Event; and

(d) ensure that all insurance policies taken out under this clause 6 are on an occurrence, not a claims made, basis.

### 6.2 Effect on insurances

The Tenant must not, without the Landlord's approval, do or fail to do anything which may:

(a) affect rights under any insurance required to be effected under clause 6.1; or

(b) affect the right to make any claim under any such insurances; or

(c) increase an insurance premium payable by the Landlord in connection with the Premises, the Building or property in them; or

(d) conflict with any laws or the requirements of any Authority or with any requirement of the Landlord's insurer(s) relating to fire or fire safety or prevention or with any insurance policy in respect of the Premises, the Building or property in them.

The Tenant must pay the actual reasonable cost to the Landlord of giving its approval under this clause 6.2 and also any additional or excess premiums payable.

# 7. Indemnities and releases

## 7.1 Exclusion of Landlord's liability

The Tenant occupies and uses the Premises, the Building and the Land at its own risk.

## 7.2 Indemnities

The Tenant is liable for and indemnifies the Landlord against liability, loss or damage arising from, and cost incurred in connection with, any of the following:

(a) damage, loss, injury or death to the extent caused or contributed to by the wrongful act or omission, negligence or default of the Tenant or of the Tenant's Employees and Agents; and

(b) the Landlord doing anything which the Tenant must do under this Sublease but has not done or which the Landlord reasonably considers the Tenant has not done properly; and

(c) any breach of any environmental or occupational health and safety laws by the Tenant or the Tenant's Employees and Agents; and

(d) any non-compliance with the requirements of Pollution Control Legislation by the Tenant or the Tenant's Employees and Agents in respect of the Premises; and

(e) any breach by the Tenant or the Tenant's Employees and Agents of this Sublease, and

(f) any accident on or about the Premises not caused by the Landlord or a trespasser,

except to the extent caused or contributed to by the wilful act or omission, negligence or default of the Landlord or its employees or agents.

## 7.3 Release of Landlord

The Tenant releases the Landlord from, and agrees that the Landlord is not liable for, liability or loss arising from, and cost incurred in connection with, any of the following:

(a) damage, loss, injury or death unless and to the extent it is caused or contributed to by the Landlord's wilful act, negligence or default; and

(b) anything the Landlord is permitted or required to do under this Sublease, except to the extent that the liability or loss arises from the Landlord's wilful act, negligence or default; and

(c) subject to the Landlord having complied with its obligations in clause 13.2, and without limiting the Tenant's right to claim a rent abatement for a service failure under clause 13.3, a Service not being available, being interrupted or not working properly; and

(d) subject to the Landlord having complied with its obligations in clause 13.2, the Landlord's plant and equipment not working properly other than as a result of the Landlord's wilful act, negligence or default; and

(e) any fire, bomb threat or other emergency drill or the Tenant evacuating the Building because of any fire, bomb threat or other emergency; and

(f) the operation of any statute, regulation or notice issued by an Authority; and

(g) any strike, riot, industrial action or civil disturbance.

## 7.4 Independent obligation

Each indemnity is independent from the Tenant's other obligations and continues during this Sublease and after it expires or is terminated.

# 8. Use

## 8.1 Permitted Use

The Tenant must use the Premises only for the Permitted Use.

## 8.2 Tenant to satisfy itself

The Tenant represents to the Landlord that it has satisfied itself that the Premises, the Building and the Services are suitable for the Permitted Use.

## 8.3 Access

The Tenant may access the Premises 24 hours per day, seven days per week, provided it complies with the Landlord's reasonable security requirements.

## 8.4 No warranty as to use

The Landlord gives no warranty (either present or future) as to the suitability of the Premises or the use to which the Premises may be put. The Tenant:

(a) accepts this Sublease with full knowledge of and subject to any prohibitions or restrictions on the use of the Premises from time to time under any laws or the requirements of any Authority; and

(b) must obtain, maintain and comply at its cost with any consent or approval from any Authority necessary or appropriate for the Permitted Use under any requirement or law; and

(c) must not by any act or omission cause or permit any consent or approval referred to in paragraph (b) to lapse or be revoked.

## 8.5 Workplace Health & Safety

The Tenant acknowledges that:

(a) it will conduct a business or undertaking at the Premises and, in so far as the Premises comprise a place of work, it will have the management or control of those Premises; and

(b) it has an obligation to ensure, so far as it is reasonably practicable:

(i) the health and safety of any persons at the Premises including its Workers and any persons engaged in the Third Party Work; and

(ii) that the Premises, the means of entering and exiting the Premises, and anything arising from the Premises in so far as the Premises comprise a place of work, are without risks to the health and safety of any person.

## 8.6 General safety obligations of the Tenant

The Tenant must:

(a) comply with its obligations under the WHS Act and WHS Regulations, including any duties it has as a person conducting a business or undertaking or as a person with the management or control of the Premises; and

(b) comply with any applicable Approved Codes of Practice;

(c) have in place systems to assess and eliminate risks to health and safety at the Premises, which are consistent with the requirements under the WHS Act, WHS Regulations and any applicable Approved Codes of Practice;

(d) ensure that, where it is not reasonably practicable to eliminate risks to health and safety, those risks are minimised, so far as is reasonably practicable;

(e) monitor any measures it implements under clauses 8.6(c) and 8.6(d);

(f) provide appropriate information, training, instruction and supervision to all persons who may be affected by the conduct of the Tenant's Business, including Workers employed or engaged by it, or who otherwise undertake work for its benefit, or at its direction, at the Premises;

(g) ensure that the Tenant's Property is safe and without risks to health and safety; and

(h) so far as is reasonably practicable, consult, co-operate and co-ordinate with the Landlord to the extent the Landlord and the Tenant may have obligations in respect of the same matter under the WHS Act; and

(i) to notify the Landlord of any risks to the health and safety of persons using:

(i) the Premises; or

(ii) the Landlord's Property;

as soon as practicable after becoming aware of such risks.

The Tenant's obligations under this clause 8.5 and clause 11.7 are in addition to, not substitution for, the Tenant's obligations to comply with other Laws and Requirements.

### 8.7 Tenant not to permit use of defective facilities

(a) The Tenant must not permit the use of any part of the Premises which has to the knowledge of the Tenant, or which is in the reasonable opinion of the Landlord or any Authority (which opinion has been communicated to the Tenant) become seriously defective, or unsafe or faulty.

(b) The Tenant acknowledges that the Landlord is not obliged to notify the Tenant of any such defect, weakness or fault.

## 9. Tenant's additional obligations

### 9.1 Compliance with requirements

The Tenant must:

(a) comply on time with all laws and the requirements of Authorities in connection with the Premises, the Tenant's Property and the use or occupation of the Premises (including obtaining and complying with all permits or approvals), but the Tenant need not carry out structural work unless it is required in connection with the Tenant's particular use or occupation of the Premises or the negligence or default or other wrongful act or omission of the Tenant or of the Tenant's Employees and Agents; and

(b) comply with all Pollution Control Legislation; and

(c) comply with the terms of the Precinct Management Agreement, as that agreement applies to the Tenant and the Premises; and

(d) inform the Landlord of damage to the Building or the Premises or of a faulty Service as soon as practicable after it becomes aware of it; and

(e) observe the recommended maximum load weights throughout the Building and the Premises; and

(f) participate in any fire, bomb threat or other emergency drill of which the Landlord gives reasonable notice; and

(g) evacuate the Building immediately and in accordance with the Landlord's directions when informed of any actual or suspected fire, bomb threat or other emergency; and

(h) promptly, when asked by the Landlord, do everything reasonably necessary for the Tenant to do to enable the Landlord to exercise its rights under this Sublease; and

(i) comply with all Rules of which it has notice. The Tenant acknowledges that it has notice of the Rules in Annexure B; and

(j) if applicable, on or before the date on which the Tenant executes this Sublease, procure the Guarantor to give the guarantee and indemnity set out in clause 22 by signing this Sublease as guarantor.

### 9.2 Other activities by the Tenant

The Tenant may not:

(a) alter the Landlord's Property or remove it from the Premises without the Landlord's approval (which will not be unreasonably withheld); or

(b) store, bring onto, use or release Hazardous Materials on the Premises or in the Common Areas, the Land or the Building except as necessary for the Permitted Use; or

(c) manufacture, produce or carry on any activity which creates or leads to the creation of any Hazardous Materials except as necessary for the Permitted Use; or

(d) permit the Premises, the Building or the environment to be contaminated, polluted or affected by any Hazardous Materials; or

(e) do or not do anything which would result in any Authority issuing any notice, direction or order requiring any clean up, decontamination, remedial action or making good under any law; or

(f) do anything to prevent the exercise of the Head Landlord's or the Landlord's rights under the Precinct Management Agreement; or

(g) do or not do anything which would constitute a violation or contravention of any law relating to the environment or occupational health and safety; or

(h) do anything in or around the Building which in the Landlord's reasonable opinion may be dangerous or offensive or may cause nuisance or damage to any person; or

(i) do anything to overload or interfere with the Building's facilities or Services nor use them for anything other than their intended purpose; or

(j) do anything to endanger or threaten the Building, the Premises or occupants of the Building; or

(k) between the hours of 11.00pm and 7.00am conduct or permit to be conducted any:

(i) business activities on the balcony or balconies of the Premises; or

(ii) spruiking within the Premises.

### 9.3 Consequential activities

If the Tenant may not do something in connection with this Sublease, then it may not do anything which may result in it happening.

### 9.4 Tenant's Employees and Agents

The Tenant must ensure that the Tenant's Employees and Agents comply, if appropriate, with the Tenant's obligations under this Sublease.

### 9.5 Directory boards

If the Tenant so requests, the Landlord must provide the Tenant with a sign or directory board identifying the Tenant's Business, in or near any entrances to the Building and the Tenant must pay to the Landlord on demand the Landlord's reasonable costs of doing so.

### 9.6 Music and live entertainment

(a) The Tenant must not conduct or permit to be conducted any amplified music or live entertainment from the balconies of the Premises.

(b) The Tenant may conduct amplified music and live entertainment within the Premises only between the hours of 7.00am and 11.00pm provided that the amplified music and live entertainment must not be at such levels so as to create:

(i) a nuisance to adjoining owners; or

(ii) an 'offensive' noise as that term is defined in the *Protection of the Environment Operations Act 1997*.

### 9.7 Nature of business activities

The Tenant must ensure that any business conducted from the Premises is consistent with the nature of the Precinct as a mixed use precinct containing upmarket apartments and commercial spaces with some upmarket and high quality retail areas and an active public promenade.

# 10. Cleaning the Premises

## 10.1 Tenant to keep clean

The Tenant must:

(a) Subject to cleaning to be done by the Landlord's cleaners in accordance with clause 10.2, keep the Premises and everything in them clean, tidy and free of refuse and vermin and comply with the Landlord's reasonable directions in that regard; and

(b) give the Landlord's cleaners access to clean the Premises at reasonable times and may not use any cleaning service other than that made available by the Landlord.

## 10.2 Landlord's cleaning service

The Landlord must provide a cleaning service for the Premises and arrange for refuse to be removed from the Premises regularly.

## 10.3 Brief for cleaning service

The Landlord will consult with the Tenant when it is tendering for the cleaning service to be provided and the Landlord will include matters reasonably required by the Tenant in the brief for the cleaning service.

## 10.4 Standard of Cleaning Services

If the Tenant reasonably determines that the cleaning service provided by the Landlord under clause 10.2 is not being carried out to the standard and at the cost of cleaning services in buildings of a similar age and standard to the Building or that the conduct of the cleaners is otherwise unsatisfactory, it may notify the Landlord. If the Landlord receives a notice from the Tenant in relation to the cleaning service it provides, it will do everything reasonably necessary to ensure the cleaning service is carried out to the standard and at the cost of cleaning services in buildings of a similar standard and age to the Building and that the conduct of the cleaners is satisfactory, if necessary by engaging different cleaners.

# 11. Repair and Tenant's Works

## 11.1 Landlord's approval

(a) The Tenant may not carry out any works (including installing fixtures or fittings or making alterations) to or in the Premises without the Landlord's prior written approval (such approval not to be unreasonably withheld or delayed). If the Landlord gives approval, it may when giving it, impose reasonable conditions. The Tenant must comply with those conditions.

(b) The Landlord acknowledges that the Tenant's fitout may include the installation of one or more kitchens in the Premises. Subject to the Tenant complying with clause 11.2, the Landlord will not withhold consent to the installation of kitchens in the Premises.

## 11.2 Tenant's works

The Tenant must ensure that any works which it does, including works under clause 11.6, are done:

(a) by contractors and consultants either nominated by or approved by the Landlord who may not unreasonably withhold its approval; and

(b) in a proper and workmanlike manner and without unreasonable disturbance or disruption to other tenants or occupants of the Land and the Building; and

(c) in accordance with any plans, specifications and schedule of finishes approved by the Landlord (who may not unreasonably withhold its approval) which must be accompanied by certifications to the Landlord's satisfaction from architects, engineers or other consultants nominated by the Landlord; and

(d) in accordance with all laws and the requirements of Authorities and the Tenant must promptly obtain and give to the Landlord a final occupation certificate issued under section 6.9 of the *Environmental Planning and Assessment Act 1979*; and

(e) in accordance with the Landlord's reasonable requirements and directions from time to time;

(f) so as to not unreasonably hinder or interfere with rectification of any works undertaken by the Landlord;

(g) so as to not adversely affect any warranties held by the Landlord in relation to any plant, materials or equipment in or services provided to the Building;

(h) in compliance with the Tenancy Design and Installation Guidelines (and to the extent of any inconsistency between this Sublease and the Tenancy Design and Installation Guidelines, this Sublease will prevail); and

(i) in accordance with the Precinct Management Agreement.

### 11.3 Conduct of Fitout Works

In undertaking any fitout works, the Tenant must:

(a) contain all rubbish and debris within the Premises and remove all rubbish from the Premises and the Building on a daily basis;

(b) repair and make good any damage which may be caused to the Building or the Premises or to any other property either directly or indirectly as a result of the Tenant's works; and

(c) not bring any heavy items or machinery on to the Building which are capable of damaging the structural integrity of the Building.

### 11.4 Landlord may order works to stop

The Tenant must stop carrying out the works if requested by the Landlord if the Landlord reasonably believes they are in breach of any provision of this Sublease, including clause 9.2.

### 11.5 Repair of items

The Tenant acknowledges that at the Commencing Date (or earlier occupation date, if applicable) the Premises were freshly painted, newly recarpeted and otherwise appeared to be in good repair.

### 11.6 Repair and replacement

The Tenant must:

(a) keep the Premises and the Tenant's Property in good repair and condition, excluding fair wear and tear, inherent defects, structural repairs and Insured Risks (where the damage is not caused or contributed to by the Tenant) and having regard to their condition at the Commencing Date (or earlier occupation date, if applicable); and

(b) maintain the Premises in accordance with the Precinct Management Agreement, as that agreement applies to the Premises; and

(c) promptly replace worn or damaged items in or attached to the Premises (including any glass, Tenant's Property and those floor coverings and furnishings which are part of the Landlord's Property) with items of similar quality as at the Commencing Date (or earlier occupation date, if applicable), subject to fair wear and tear and the other exceptions referred to in clause 11.6(a); and

(d) promptly make good any damage caused by the Tenant or the Tenant's Employees and Agents to the Premises or the Building subject to fair wear and tear.

### 11.7 Appointment of Tenant as Principal Contractor

(a) Without limiting or in any way affecting the Tenant's obligations under this lease or any Related Agreement, where any Work is to be undertaken at the Premises, whether during the Term or during any licence period before the Commencement Date, the Tenant accepts appointment as the Principal Contractor.

(b) Despite clause 11.7(a)11.7(a), the Tenant may ask the Landlord to consent to the appointment of a third party as the Principal Contractor, in place of the Tenant, for certain Work. If the Landlord consents to the appointment of a third party as Principal Contractor, the Tenant must ensure that the third party is formally appointed as the Principal Contractor (in a manner consistent with the WHS Act) and is made aware of its obligations as Principal Contractor under the WHS Act and WHS Regulations.

# 12. Transfer and other dealings

## 12.1 Prohibited dealings

The Tenant may only transfer this Sublease, sublet, licence or otherwise part with possession of the Premises in accordance with clause 12.2.

## 12.2 Transfer conditions

The Tenant may only transfer this Sublease or sublet or license or otherwise part with possession of the Premises if, before it does so:

(a) at least one month prior to the proposed transfer, sublease, licence or other dealing, it gives the Landlord written notice of the proposed dealing; and

(b) it satisfies the Landlord (acting reasonably) that the proposed transferee, sub-tenant, licensee or other person taking possession (each called in this clause the **new tenant**) is financially sound and capable of performing the Tenant's obligations under this Sublease and will be conducting the Permitted Use; and

(c) the proposed new tenant signs a document relating to the transfer or other dealing in a form reasonably required by the Landlord; and

(d) any reasonable bank guarantee, reasonable cash deposit, corporate guarantee or other security reasonably required by the Landlord (excluding personal guarantees) is provided; and

(e) the Landlord has obtained any consents it is obliged to obtain under the Headlease; and

(f) the Tenant is not in default of which the Landlord has given the Tenant notice and a reasonable opportunity to remedy the default or any default has been waived in writing by the Landlord; and

(g) the Tenant and the proposed new tenant comply with all the Landlord's reasonable requirements;

(h) in the case of a proposed sublease, if the rent payable by the new tenant under the sublease is at a rate per square metre which is Jess than the rate then payable by the Tenant under this Sublease, the Tenant must provide to the Landlord a written acknowledgment in a form satisfactory to the Landlord of that fact and that the rent payable by the new tenant under the sublease cannot be used as evidence in the assessment of the Rent payable under this Sublease; and

(i) in the case of a proposed sublease, the document signed by the proposed tenant under clause 12.2(c) must contain an acknowledgment that if this Sublease is terminated, then the proposed sublease will also terminate on the same date.

## 12.3 Change in control of Tenant: company

If:

(a) the Tenant is a company which is not listed or is wholly owned by a company which is not listed on the Australian Stock Exchange except a state owned corporation; and

(b) there is a proposed change in the shareholding of the Tenant or its holding company so that a different person or group of persons from that existing at the date on which the Tenant acquired its interest in this Sublease will control the composition of the board of directors or more than 50% of the shares giving a right to vote at general meetings,

then that proposed change in control is treated as a proposed transfer of this Sublease, the person or group of persons acquiring control is treated as the proposed new tenant and clause 12.2 (except for clause 12.2(c)) applies.

### 12.4 Change in control of Tenant: unit trust

If:

(a) the Tenant is the trustee of a unit trust which is not listed on the Australian Stock Exchange; and

(b) there is a proposed change in the ownership of units in the unit trust so that a different person or group of persons from that existing at the date on which the Tenant acquired its interest in this Sublease will effectively control the unit trust,

then that proposed change in control is treated as a proposed transfer of this Sublease, the person or group of persons acquiring control is treated as the proposed new tenant and clause 12.2 (except for clause 12.2(c)) applies.

### 12.5 Securities

The Tenant may create or allow to come into existence:

(a) a security over the Tenant's interest in this Sublease; or

(b) a lease or security affecting the Tenant's Property,

with the Landlord's prior written approval which may not be unreasonably withheld where the Tenant is a company and wishes to enter into a proper fixed and floating charge over its assets in good faith as a means of securing a bank overdraft facility or financing the Tenant's Property (as the case may be). If the Landlord gives its approval, the Tenant must execute a waiver in the form reasonably required by the Landlord.

## 13. Landlord's additional obligations and rights

### 13.1 Quiet enjoyment

Subject to the Landlord's rights, while the Tenant complies with its obligations under this Sublease, it may occupy the Premises during the Term without interference by the Landlord or by any person rightfully claiming under the Landlord.

### 13.2 Building and Services

The Landlord must take reasonable action to keep:

(a) the air conditioning available to the Premises during the Building Hours and, at the Tenant's request and reasonable cost, during hours outside the Building Hours; and

(b) the lift services available to the Premises (including at least one lift service to Level 7 of the Premises) at all times; and

(c) the Services provided by the Landlord or persons authorised by the Landlord (including the Landlord's air conditioning and lift plant and equipment in the Building) in good working order; and

(d) the Common Areas clean, free of debris and rubbish, secure and in good repair; and

(e) the Building and the Land in good repair, watertight and weatherproof to normal industry standards, and structurally sound.

Subject to clause 13.3 the Tenant may not claim compensation or damages or terminate this Sublease or stop or reduce payments under it because a Service is not available or is interrupted or fails or any part of the Landlord's Property breaks down or the Common Areas are not clean or secure.

### 13.3 Services failure

(a) The Landlord must address services (lifts and air-conditioning) failures or problems that are notified to it by the Tenant within a reasonable period of time, having regard to the

nature of the failure, which time shall not be more than 24 hours on a weekday or a reasonable time frame on weekends.

(b) In the event of a Services failure whereby:

(i) all of the lifts servicing the Premises cease to function completely; or

(ii) the air-conditioning system ceases to provide conditioned air to the leased Premises and fails to maintain conditions in the Premises between the temperatures of 20°C to 26°C Dry Bulb and the ambient conditions are less than 32°C Dry Bulb/23°C Wet Bulb during summer and greater than 7°C Dry Bulb during winter;

for a period of five consecutive Business Days (**Relevant Failure Period**), except where:

(iii) the Tenant is responsible for the event in subparagraphs (i) or (ii); or

(iv) the Tenant caused or contributed to the event in subparagraphs (i) or (ii); or

(v) the failure is caused by events beyond the Landlord's reasonable control provided that the Landlord used reasonable endeavours (having regard to the nature of the event or failure) to rectify the failure; or

(vi) the Landlord has promptly commenced substantial steps to rectify the failure;

then 50% of the amount of the Rent that is payable in respect of the proportion of the Premises adversely affected by the failure will abate with effect from the expiry of the Relevant Failure Period until the service failures referred to in subparagraphs (i) or (ii) cease. The abatement may only be claimed by the Tenant as a rebate under subclauses 13.3(d) to 13.3(f).

(c) The Landlord will not be held liable and the Tenant releases the Landlord (to the extent permitted by law) from any claims for any cost, damage or loss to the extent that the failure of the Services is substantially caused by an action or inaction of an external party or Authority, body, union, statute, regulation or notice issued by any competent Authority over which the Landlord has no direct control.

(d) Where the Tenant wishes to claim a rental rebate, the Tenant must serve a notice (**Rebate Notice**) that it intends to claim a rental rebate, providing details of the basis for claiming and calculating the rental rebate.

(e) If the Landlord fails to respond to the Rebate Notice within 14 Business Days after receipt of the Rebate Notice, the Tenant can claim the rental rebate. If the Landlord disputes, in writing, the Rebate Notice, then:

(i) the matter must be determined by an expert; and

(ii) any adjustment of the amount of the rental rebate must be delayed, pending resolution of the dispute by an expert. Once the matter has been determined by the expert, any necessary adjustment in the rental payments for the rental rebate can be made.

(f) In determining the amount of the rental rebate, the following matters must be taken into consideration:

(i) the Landlord being notified promptly by notice from the Tenant of the failure, which must have significantly and adversely affected the conduct of the Tenant's Business;

(ii) the duration of the affectation to the Tenant's Business; and

(iii) the proportion of the Premises affected.

(g) In the event that the matter is to be determined by an expert the parties agree that:

(i) the expert is to be appointed by the President for the time being of the Law Society of New South Wales at the request of either party;

(ii) at the time of appointment the expert must be both suitably qualified and experienced to determine the dispute;

(iii) the expert acts as an expert and not as an arbitrator;

(iv) the expert must give a written determination setting out the reasons for it with particular reference to what was taken into account and what was disregarded;

(v) the expert's decision will be given to both parties in writing within 20 Business Days and is final and binding on the parties; and

(vi) the expert will determine who must pay the expert's costs and in what proportion if they are to be shared.

### 13.4 Landlord's Insurance

The Landlord must maintain with its usual insurers an insurance policy against Joss or damage by any Insured Risk (other than hostile aircraft), which must extend to the full replacement value of the Building.

### 13.5 Management

The Landlord must take reasonable steps to manage Outgoings efficiently without compromising the standard of the Building. The Landlord must promptly pay to the relevant authorities any rates and taxes and other Outgoings in respect of the Premises, the Building and the Land.

### 13.6 Landlord's Rights

The Landlord may:

(a) carry out any works on the Land or in or to the Building (including alterations and redevelopment), or close or otherwise use the Common Areas, if the Landlord takes reasonable steps (except in emergencies) to:

(i) minimise interference with the Tenant's use and occupation of the Premises; and

(ii) ensure that activities likely to generate excessive noise, dust and vibration are carried out on weekends or between the hours of 7.00pm and 7.00am Monday to Friday,

provided that the Landlord's rights in relation to the Premises are limited to works which are necessary or required as the result of an emergency or to comply with the requirements of any Authority.

(b) exclude or remove any person from the Land or the Building who the Landlord reasonably considers to be unauthorised, a nuisance or dangerous; and

(c) acting reasonably, restrict access to loading docks, delivery and pick-up areas and parking areas if the Landlord takes reasonable steps (except in emergencies) to minimise interference with the Tenant's use and occupation of the Premises; and.

(d) with the Tenant's consent (not to be unreasonably withheld) permit functions, displays and other activities in the Building or on the Land; and

(e) install and use public address and emergency systems throughout the Building (including the Premises); and

(f) change the direction or flow of pedestrian or vehicular traffic into, out of or through the Building; and

(g) change the name, logo of or signage of the Building; and

(h) close the Building in an emergency; and

(i) install, use, maintain, replace, repair, alter and add to the Services (or any part of them) from, to, servicing or in the Premises, if the Landlord takes reasonable steps (except in emergencies) to minimise interference with the Tenant's use and occupation of the Premises,

and the Tenant may not make any claim or abate any payment or terminate this Sublease if the Landlord exercises any of its rights under and in accordance with this clause 13.6 in compliance with its obligations under this clause 13.6

### 13.7 Landlord may enter

(a) The Landlord may, with its architects, consultants, workmen and others authorised by the Landlord, enter the Premises at reasonable times on reasonable notice:

(i) to finalise any outstanding aspect of the works under the Bond Store 1 Agreement to Lease or to correct any defect or omissions in those works;

(ii) to see if the Tenant is complying with its obligations under this Sublease; or

(iii) to do anything which either party must or may do under this Sublease or which is necessary to comply with any law or the requirements of any Authority.

In doing so, the Landlord will take reasonable steps to minimise interference with the Tenant's use and occupation of the Premises and must be accompanied by a representative of the Tenant, if one is provided.

(b) If the Landlord (acting reasonably) decides there is an emergency or if the Tenant is in default under this Sublease, the Landlord may enter at any time without notice.

### 13.8 Prospective tenants or purchasers

After giving reasonable notice, the Landlord may:

(a) during the Term enter the Premises in the presence of a representative of the Tenant (if one is provided) to show prospective purchasers through the Premises and display from the Premises a sign indicating that the Building is for sale; and

(b) during the last 12 months of the Term show prospective tenants through the Premises in the presence of a representative of the Tenant (if one is provided) and display from the Premises a sign indicating that the Building is or the Premises are available for lease.

### 13.9 No claim

The Tenant agrees that any works undertaken by the Landlord in accordance with clauses 13.3 and 13.7 or otherwise in accordance with this Sublease are not in breach of any covenant or term of this Sublease including any covenant for quiet enjoyment and that the Landlord is not liable to the Tenant and the Tenant will not make any claim against the Landlord whatsoever for any loss of profit or rent abatement provided the Landlord complies with its obligations under those clauses to take reasonable steps to minimise interference with the Tenant's use and occupation of the Premises. The release of the Landlord in this clause 13.9 does not apply to liability arising out of personal injury or as a result of any breach or negligence of the Landlord in carrying out the relevant works.

### 13.10 Enforcing rights

The Tenant acknowledges that the Landlord may enforce its rights against the Tenant whether or not the Landlord enforces its rights against other tenants or occupiers of the Building.

### 13.11 To deal with the Land

(a) The Landlord may:

(i) subdivide (including by strata or stratum subdivision) the Land or the Building or grant easements or other rights over it or the Premises unless this would:

(A) have a material adverse effect on the Tenant's use or occupation of the Premises or the nature or quality of the Premises or the Building; or

(B) materially increase the occupation costs of the Tenant.

The Tenant must promptly sign all plans and other documents reasonably required by the Landlord to enable the Landlord to do those things and will make no objection, claim for compensation or abatement of Rent in relation to any such dealing; and

(ii) for:

(A) the purpose of the provision of public or private access to the Building; or

(B) the purpose of rectifying any encroachment; or

(C) the support of structures in the future erected on or from adjoining land; or

(D) any Service,

dedicate land or transfer, grant or create or take the benefit of any easement or other right to or from, or enter into any arrangement or agreement with, any owners, tenants or occupiers or others having an interest in any land (including the Land) near the Premises or with any Authority (under any valid and enforceable requirement of that Authority) as the Landlord thinks fit, provided that to do so would not have a material adverse effect on the Tenant's use and occupation of the Premises. This Sublease will be taken to be subject to that easement or other right as envisaged by this clause 13.11, and the Tenant will promptly on request by the Landlord confirm to the Office of Land and Property Information or any other relevant Authority its consent to that easement or other right.

(b) If the Landlord subdivides the Land by way of strata subdivision:

(i) any reference in this Sublease to the Building will be deemed to be a reference to the buildings comprised in the registered plan or plans of which the Premises form part; and

(ii) any levies or other moneys payable to the owners corporation will be deemed to be Outgoings for the purposes of this Sublease; and

(iii) the Rules will be deemed to include any by-laws of the owners corporation; and

(iv) this Sublease will be deemed to be amended in any respect that is necessary to ensure that this Sublease reflects the fact that the strata subdivision has occurred.

### 13.12 Change of landlord

If the Landlord deals with its interest in the Land (including by transfer or the grant of a headlease or concurrent lease) so that another person becomes landlord, the Landlord is released from any obligation under this Sublease arising after it ceases to be landlord. If requested by the Landlord, the Tenant must, at the Landlord's expense, sign the documents which that other person reasonably requires to give it a direct contractual relationship with the Tenant on the same terms as this Lease. If requested by the Tenant, the Landlord must at the Landlord's expense procure that the other person signs the documents which the Tenant reasonably requires to give the Tenant a direct contractual relationship with the other person.

### 13.13 Landlord may rectify

The Landlord may do anything which the Tenant should have done under this Sublease but which it has not done or which the Landlord reasonably considers the Tenant has not done properly. The Tenant must promptly pay all reasonable expenses and costs incurred by the Landlord under this clause 13.13.

### 13.14 Agents

The Landlord may appoint agents to exercise any of its rights or perform any of its duties under this Sublease. Communications from the Landlord override those from the agents or others if they are inconsistent, except where the Tenant has already acted in reliance on a communication from the Landlord's agent.

### 13.15 Common Areas

Subject to this Sublease and the Rules, the Tenant and the Tenant's Employees and Agents may use the Common Areas for the purposes for which they are intended.

### 13.16 Rules

The Landlord may vary the Rules or make Rules which do not materially derogate from the Tenant's express rights under this Sublease in connection with the operation, use and occupation of the Building. The Landlord must give the Tenant a notice about the Rules which the Landlord makes or changes.

### 13.17 Authority

Any right of the Landlord under this Sublease may be exercised by a person authorised by the Landlord provided the authority is first notified by the Landlord to the Tenant in writing.

## 14. Expiry or Termination

### 14.1 Tenant to vacate

The Tenant must vacate the Premises on the earlier of the Expiry Date and the date on which this Sublease is terminated. Before vacating the Premises, unless otherwise required by the Landlord, the Tenant must have completed the Make Good of the Premises prior to the day which is the earlier of the Expiry Date and the date on which the Premises are vacated by the Tenant or if the Tenant holds over pursuant to clause 15 before the date the Tenant vacates the Premises at the end of its holding over period.

### 14.2 If Tenant's Property not removed

If the Tenant does not Make Good as required under clause 14.1 then, without affecting any of its other rights, the Landlord may remove and store any fixtures, fittings, furnishings, cables, conduits, wires and other Tenant's Property and the Landlord may also Make Good. The Tenant must pay the Landlord on demand all costs and expenses incurred in doing those things and a fee equivalent to the aggregate of the Rent, Tenant's Contribution and Cleaning Charge divided by 365 for each day that it does not Make Good (calculated at the rate provided for in clause 15.1(b) after the Expiry Date or the end of its holding over period. The Landlord acknowledges that the fee received under this clause must be taken into account for the purposes of assessing the Landlord's Loss of Bargain Damage and any other damages recoverable by the Landlord as a result of the early termination of this Lease.

### 14.3 Forfeiture of Tenant's Property

The Landlord may elect not to do any of the things mentioned in clause 14.2, in which case unless the Tenant does do those things by the day which is the earlier of the Expiry Date or the date on which the Premises are vacated by the Tenant, then the things not removed from the Premises by the Tenant will be forfeited to the Landlord.

### 14.4 Property of Landlord

If the Tenant fails to comply with the obligations referred to in clause 14.3 then the things mentioned in that clause will immediately become the property of the Landlord.

### 14.5 Delivery of Keys

On the day on which the Tenant must vacate the Premises, the Tenant must give the Landlord the keys, access cards and similar devices for the Building and the Premises held by the Tenant, the Tenant's Employees and Agents and any other person they have given them to.

## 15. Holding over

### 15.1 Monthly tenancy

If the Tenant continues to occupy the Premises after the Expiry Date with the Landlord's prior written approval, it does so under a monthly tenancy:

(a) which either party may terminate on one month's notice ending on any day; and

(b) at a rent which is an amount determined by the Landlord (failing which, it will be 104.25% of one twelfth of the total of the Rent, the Cleaning Charge and the Tenant's Contribution payable by the Tenant for the preceding period of 12 months).The amount and rate of that rent for the monthly tenancy may be reviewed at the times and in the manner which the Landlord determines to be appropriate in its absolute discretion subject to the Landlord providing one month's prior notice to the Tenant, and any provision in this Sublease relating to a mechanism for the calculation of or any limitation on or right of review of any Rent does not apply to this clause 15.1.

### 15.2 Conditions of monthly tenancy

Subject to clause 15.1, the monthly tenancy is on the same terms as this Sublease except for those changes which are necessary to make this Sublease appropriate for a monthly tenancy (but any bond or bank guarantee required under this Sublease may not be reduced).

## 16. Damage to the Building or Premises

### 16.1 Damage to the Building

Clauses 16.2 to 16.8 will apply if:

(a) the Building is damaged so that the Premises are substantially unfit for the use of the Tenant or substantially inaccessible; and

(b) the damage has not been caused (in whole or in part) by the act, neglect or default of the Tenant.

### 16.2 Abatement of Rent and Tenant's Contribution

The Tenant is not liable to pay Rent and the Tenant's Contribution for the period that the Premises are substantially unfit for use or substantially inaccessible, except to the extent that the damage was caused by the act, neglect or default of the Tenant. If the Premises are still usable but the usability is diminished because of the damage, the Tenant's liability to pay Rent is reduced in proportion to the reduction in usability.

### 16.3 Dispute

Any dispute under this clause 16 as to the amount by which the Rent and the Tenant's Contribution will reduce will be determined by a Valuer who:

(a) is appointed in accordance with clause 3.6; and

(b) acts as an expert and not as an arbitrator.

The parties must each pay one half of the Valuer's costs.

### 16.4 Restoration notice

(a) If the Tenant wants the Landlord to repair the damage:

(i) the Tenant must give the Landlord a damage notice within 21 days after the Premises are damaged; and

(ii) the Landlord must give the Tenant a notice as soon as reasonably practicable after receiving the damage notice stating whether it intends to repair the damage.

(b) If the Landlord:

(i) gives the Tenant a notice stating that it does not intend to repair the damage; or

(ii) within three months after receiving the damage notice, does not give the Tenant a restoration notice stating that the Landlord intends to repair the damage,

then the Tenant may terminate this Sublease by giving one month's notice to the Landlord.

### 16.5 Tenant may terminate

If the Landlord does not repair the damage within a reasonable time after giving the restoration notice, the Tenant may give the Landlord a notice of intention to terminate, stating that the Tenant will terminate this Sublease if the Landlord does not repair the damage within a reasonable time after receiving the termination notice. Unless the Landlord, after receiving that notice of intention to terminate, proceeds with reasonable expedition and diligence to commence or carry out the necessary works, the Tenant may terminate this Sublease by giving not less than one month's notice to the Landlord. At the end of that second notice, this Sublease will be at an end.

### 16.6 Landlord may terminate

If, in the Landlord's opinion, it is impractical or undesirable to repair the damage, then the Landlord may terminate this Sublease by giving one month's notice to the Tenant.

### 16.7 Termination on destruction

If the Premises are totally destroyed, then either party may terminate this Sublease by giving one month's notice to the other.

### 16.8 Release

Each party releases the other party from liability or loss arising from and costs incurred in connection with the termination of this Sublease under this clause 16 but not from any breach of this Sublease existing at the date of termination.

### 16.9 Resumption

Without prejudice to any statutory right of the Landlord to receive compensation for resumption, nothing contained in this Lease is deemed to preclude or prevent the exercise of any statutory right of resumption affecting the Premises at any time during the Term.

## 17. Default

### 17.1 Essential terms

Each obligation of the Tenant to pay money and to provide security to the Landlord and its obligations under clauses 6, 8, 10.1, 11 and 12 will become essential terms of this Sublease if the Tenant fails to comply with them within seven days or such longer period as is reasonable in the circumstances after receipt of notice from the Landlord of the non-compliance.

### 17.2 Landlord's right to terminate

The Landlord may terminate this Sublease by giving the Tenant notice or by re- entry if the Tenant:

(a) repudiates its obligations under this Sublease; or

(b) has not paid any money payable to the Landlord under this Sublease for seven days after its due date and has failed to comply with a notice from the Landlord requiring payment within a further four days; or

(c) does not comply with an essential term of this Sublease; or

(d) does not comply with an obligation under this Sublease (which is not an essential term) and, in the Landlord's reasonable opinion:

(i) the non-compliance can be remedied, but the Tenant does not remedy it to the Landlord's reasonable satisfaction within a reasonable time after the Landlord gives the Tenant notice to remedy it; or

(ii) the non-compliance cannot be remedied or compensated for; or

(iii) the non-compliance cannot be remedied but the Landlord can be compensated and the Tenant does not pay the Landlord compensation satisfactory for the breach within 14 days after the Landlord gives the Tenant notice to pay it; or

(e) an Insolvency Event occurs in respect of the Tenant or a guarantor of the Tenant's performance under this Sublease.

### 17.3 Recovery of money

If this Sublease is terminated either under clause 17.2 or 17.9, without limiting its other rights under this Sublease, the Landlord may in its discretion:

(a) at any time treat the event giving rise to that determination as a repudiation of the Sublease by the Tenant; and

(b) recover from the Tenant:

(i) all arrears of money payable by the Tenant and any interest on that money calculated at the rate specified in Item 7, calculated in each case to that date of termination; and

(ii) all costs (including the Landlord's administration costs) incurred by the Landlord in rectifying any breaches by the Tenant of this Sublease; and

(iii) all costs incurred by the Landlord in recovering any money or enforcing any security and, where applicable, in having a determination made under clause 17.3(b)(iv); and

(iv) the Loss of Bargain Damage calculated in accordance with clause 17.5 and interest calculated in accordance with clause 17.7; and

(v) the repayment of any Incentive calculated in accordance with clause 17.6 and interest calculated in accordance with clause 17.7; and

(vi) all costs incurred by the Landlord for legal fees and expenses, marketing, agency fees and to Make Good.

### 17.4 Tenant acknowledgments

The Tenant agrees that:

(a) a fundamental assumption in the calculation of any Incentive was that this Sublease would continue until the Expiry Date; and

(b) by entering into this Sublease the Tenant represented and warranted to the Landlord that if there was no default of the Landlord entitling the Tenant to terminate before the Expiry Date, or other event entitling either party to terminate the Lease (except as a result of the Tenant's default) this Sublease would continue until the Expiry Date; and

(c) the Landlord will suffer loss if this Sublease is terminated before the Expiry Date due to the Tenant's default, including that any Incentive was calculated on the basis of the assumption set out in clause 17.4(a) and that the Landlord relied on the representation and warranty set out in clause 17.4(b); and

(d) the Loss of Bargain Damage (together with the repayment of part of any Incentive in accordance with clause 17.6) represents a genuine pre-estimate of the loss which will be suffered by the Landlord, including in relation to any Incentive and the early termination of this Sublease if it does not continue until the Expiry Date for any reason other than the Landlord's default, without limiting any other loss or damage which the Landlord may recover in connection with early termination of this Sublease and, in particular, the other provisions of this clause 17.

### 17.5 Loss of Bargain Damage

The Landlord may notify the Tenant of the Landlord's determination of the Loss of Bargain Damage. If the Tenant disputes the Landlord's notice determining the Loss of Bargain Damage by delivering a dispute notice within 14 days after receiving the Landlord's notice, or if required by the Landlord, then the Loss of Bargain Damage must be calculated by a Valuer appointed by the Landlord who is to determine as an expert and not as an arbitrator the Loss of Bargain Damage and who is to include in making that determination amounts for changes in market conditions which in that Valuer's opinion are proper and whose determination must be in writing and will be final and binding on the parties.

### 17.6 Repayment of Incentive

The Landlord may notify the Tenant of the Landlord's determination of the proportion of any Incentive which must be repaid by the Tenant to the Landlord, calculated as follows:

$$R = 1\,x\,\frac{TR}{T}$$

where:

R = the amount to be repaid;

I = the amount of the Incentive;

TR = the number of months (to the nearest whole month) of the unexpired portion of the Term at the date of termination of this Sublease; and

T = the number of months in the Term.

### 17.7 Interest

The Tenant must pay the Landlord the Loss of Bargain Damage and any part of any Incentive which is to be repaid together with interest on those amounts calculated at the rate set out in Item 7 from the date of termination up to and including the date of payment. Payment must be made within seven days after the Landlord requires payment of those amounts by notice given to the Tenant or, if the Loss of Bargain Damage is determined by an expert under clause 17.5, within seven days after the Tenant is informed of the determination.

### 17.8 Landlord's rights not limited

The rights and entitlements conferred on the Landlord by this clause 17 or their exercise:

(a) do not restrict or prevent the Landlord from recovering loss or damage from the Tenant or from any security provided by or on behalf of the Tenant or from exercising any other right or remedy which the Landlord has or may acquire; and

(b) are not adversely affected by:

(i) granting the Tenant any concession, indulgence, forbearance or time to pay; or

(ii) any compounding or compromise reached or attempted to be reached with the Tenant; or

(iii) any acceptance of any moneys by the Landlord whether paid by the Tenant or by any other person; or

(iv) any postponement, non-exercise or alteration of any right or remedy available to the Landlord; or

(v) any alteration to this Sublease agreed in writing by the Landlord; or

(vi) the conversion of the term of this Sublease to a monthly tenancy under clause 17.9; or

(vii) the Landlord re-taking possession of the whole or any part of the Premises by any means.

### 17.9 Conversion to monthly tenancy

If any of the events specified in clause 17.2 occurs, the Landlord may by notice to the Tenant convert this Sublease into a monthly tenancy which may be terminated by the Landlord on one month's notice to the Tenant expiring on any date. That monthly tenancy is to be on the same terms and conditions as this Sublease (except for the term and any option to renew) and in particular the provisions of clauses 17.3 to 17.8 inclusive will apply as if this Sublease had been terminated without being first converted to a monthly tenancy.

### 17.10 Confidential information

All information given to the Tenant by the Landlord in connection with the Incentive is the Landlord's confidential information and the Tenant may not disclose it to any person without the Landlord's prior approval except where disclosure is required by law or any Authority.

This clause 17:

(a) continues after termination of this Sublease; and

(b) does not limit any other right which the Landlord may have under this Sublease following its termination; and

(c) does not permit the Landlord to recover again any amount which has been recovered from the Tenant whether as Loss of Bargain Damage or otherwise.

## 18. Costs, charges and expenses

In connection with this Sublease and any document or matter in connection with it, the Tenant must pay promptly:

(a) for everything it must do; and

(b) all stamp duty and registration fees; and

(c) on demand, the Landlord's reasonable costs, charges and expenses (including legal costs) including those for:

(i) negotiating, preparing, executing, stamping and registering any actual or proposed transfer, sub-sublease, licence or surrender or termination of this Sublease; and

(ii) obtaining any consents which the Landlord must obtain before giving approvals (including the consent of the Head Landlord and any mortgagee), considering requests for approvals and considering any information provided with respect to any proposed dealing permitted by this Sublease (even if the proposed dealing for which approval is requested does not proceed); and

(iii) the exercise of any right, power, privilege, authority or remedy of the Landlord in respect of this Sublease if ordered by any competent Authority or Court or determined pursuant to the Precinct Management Agreement insofar as those costs relate to the Tenant's obligations under this Sublease;

(d) all reasonable costs, charges and expenses in connection with works which the Tenant carries out, including those incurred by the Landlord and the Landlord's consultants in considering, approving and supervising the works and those of modifying or varying the Building because of the works (including under clause 11); and

(e) on demand, the Landlord's costs in relation to any event specified in clause 17.2 occurring, the actual or contemplated enforcement of, or actual or contemplated exercise, preservation or consideration of, any rights, powers or remedies under this Sublease.

The Landlord and the Tenant will each pay their own legal costs for the preparation of this Sublease.

## 19. Notices

### 19.1 Address for service

A notice, request, demand, consent, approval or other communication to or by a party or between the parties to this Sublease must be:

(a) in writing; and

(b) left at the address or sent to the facsimile number of the party in Item 12, as varied by notice.

### 19.2 Method of service

A notice or approval is taken to be given if sent by facsimile, on the next business day after it is sent unless the sender is aware that transmission is impaired.

## 20. Miscellaneous

### 20.1 Waiver and variation

A provision of or a right under this Sublease may not be waived or varied except in writing signed by whoever is to be bound.

### 20.2 No waiver

If the Landlord:

(a) accepts rent or any other money on any account (before or after termination); or

(b) fails to exercise or delays exercising any right under this Sublease including under clause 17; or

(c) gives any concession or indulgence to the Tenant; or

(d) attempts to mitigate its loss,

it is not a waiver of any breach or of the Landlord's rights under this Sublease. An attempt by the Landlord to mitigate its loss is not a surrender of this Sublease.

### 20.3 Approvals

The Landlord may withhold or give conditionally or unconditionally its approval in its absolute discretion unless this Sublease expressly says otherwise.

### 20.4 Exclusion of statutory provisions

(a) The covenants, powers and provisions implied in leases by sections 84, 84A, 85 and 86 of the *Conveyancing Act 1919* do not apply to this Sublease.

(b) In this Sublease, words used in any of the forms of words in the first column of Part 2 of Schedule 4 to the *Conveyancing Act 1919* do not imply a covenant under section 86 of that Act.

### 20.5 Prior breaches

Expiry or termination of this Sublease does not affect any rights in connection with a breach of this Sublease before then.

### 20.6 Caveats

The Tenant:

(a) may not lodge a caveat on the title to the Land, except a caveat noting the Tenant's interest under this Sublease (if this Sublease is not registered but must be to ensure that it is enforceable against the Landlord's successors in title); or

(b) must use reasonable endeavours to prevent a caveat that is lodged by a person claiming through the Tenant from remaining on that title.

If the Tenant lodges a caveat permitted by this clause 20.6, it must do everything necessary to permit registration of any dealing if its rights under this Sublease are not diminished. The Tenant must withdraw that caveat on the earlier of registration and expiry or termination of this Sublease.

### 20.7 Warranties and undertakings

(a) The Tenant warrants that it:

(i) has relied only on its own enquiries in connection with this Sublease and not on any representation or warranty by the Landlord or any person acting or seeming to act on the Landlord's behalf; and

(ii) was made aware of the Rules then current when signing this Sublease.

(b) The Tenant must comply on time with undertakings given by or on behalf of the Tenant in connection with this Sublease.

### 20.8 Counterparts

This Sublease may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument.

### 20.9 Severability

If the whole or any part of a provision of this Sublease is void, unenforceable or illegal in a jurisdiction, it is severed for that jurisdiction. The remainder of this Sublease has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause 20.9 has no effect if the severance alters the basic nature of this Sublease or is contrary to public policy.

# 21. Bank Guarantee

## 21.1 Tenant must deliver

On or before the date on which the Tenant executes this Sublease, the Tenant must deliver the Bank Guarantee to the Landlord. The Bank Guarantee will be security for the performance by the Tenant under this Sublease. The Tenant must at all times ensure that any Bank Guarantee is kept current and enforceable.

## 21.2 Landlord may call on Bank Guarantee

If the Tenant does not comply with any of its obligations under this Sublease, whether this Sublease is registered or not, then the Landlord may call on the Bank Guarantee without notice to the Tenant.

## 21.3 Replacement Bank Guarantee

If the Landlord calls on the Bank Guarantee or the Rent or the Tenant's Contribution is increased, then no later than 14 days after the Landlord gives the Tenant a notice asking for it, the Tenant must deliver to the Landlord a replacement or additional Bank Guarantee so that the amount of that guarantee is the amount in Item 13.

## 21.4 Return of Bank Guarantee

Subject to clause 21.2, the Landlord will return every Bank Guarantee to the Tenant promptly following the later of (as appropriate):

(a) the date which is two months after the Expiry Date or earlier date of termination of this Sublease; and

(b) the date on which the Tenant has complied with all of its obligations under this Sublease, including under clause 14; and

(c) receipt by the Landlord of a replacement Bank Guarantee in accordance with clause 21.3.

## 21.5 Essential term

The Tenant's obligations under this clause 21 are essential terms of this Sublease.

## 21.6 Overriding provision

This clause 21 does not apply whilst the tenant:

(a) is Newcastle Port Corporation ABN 50 825 884 846 as a state owned corporation with a minimum tangible asset backing that is not less than 80% of the tangible assets as set out in the Newcastle Port Corporation Annual Report 2007/08; or

(b) is any entity whose obligations under this Sublease are guaranteed by the government of New South Wales.

# 22. Guarantee And Indemnity

## 22.1 Consideration

The Guarantor gives this guarantee and indemnity in consideration of the Landlord agreeing to enter into this Sublease at the request of the Guarantor. The Guarantor acknowledges the receipt of valuable consideration from the Landlord for the Guarantor incurring obligations and giving rights under this guarantee and indemnity.

## 22.2 Guarantee

The Guarantor unconditionally and irrevocably guarantees to the Landlord the due and punctual performance and observance by the Tenant of its obligations:

(a) under this Sublease, even if this Sublease is not registered or is found not to be a lease or is found to be a lease for a term less than the Term; and

(b) in connection with its occupation of the Premises;

including the obligations to pay money.

### 22.3 Indemnity

As a separate undertaking, the Guarantor unconditionally and irrevocably indemnifies the Landlord against all liability or loss arising from, and any costs, charges or expenses incurred in connection with:

(a) the Tenant's breach of this Sublease; or

(b) the Tenant's occupation of the Premises,

including a breach of the obligations to pay money or:

(c) a representation or warranty by the Tenant in this Sublease being incorrect or misleading when made or taken to be made; or

(d) a liquidator disclaiming this Sublease.

It is not necessary for the Landlord to incur expense or make payment before enforcing that right of indemnity.

### 22.4 Interest

The Guarantor agrees to pay interest on any amount payable under this guarantee and indemnity from when the amount becomes due for payment until it is paid in full. The Guarantor must pay accumulated interest at the end of each month without demand. Interest is calculated on daily balances at the rate set out in Item 7.

### 22.5 Enforcement of rights

The Guarantor waives any right it has of first requiring the Landlord to commence proceedings or enforce any other right against the Tenant or any other person before claiming under this guarantee and indemnity.

### 22.6 Continuing security

This guarantee and indemnity is a continuing security and is not discharged by any one payment.

### 22.7 Guarantee not affected

The liabilities of the Guarantor under this guarantee and indemnity as a guarantor, indemnifier or principal debtor and the rights of the Landlord under this guarantee and indemnity are not affected by anything which might otherwise affect them at law or in equity including, but not limited to, one or more of the following:

(a) the Landlord granting time or other indulgence to, compounding or compromising with or releasing the Tenant or any other Guarantor; or

(b) acquiescence, delay, acts, omissions or mistakes on the part of the Landlord; or

(c) any transfer of a right of the Landlord; or

(d) the termination, surrender or expiry of, or any variation, assignment, subletting, licensing, extension or renewal of or any reduction or conversion of the Term of this Sublease; or

(e) the invalidity or unenforceability of an obligation or liability of a person other than the Guarantor; or

(f) any change in the Tenant's occupation of the Premises; or

(g) this Sublease not being registered; or

(h) this Sublease not being effective as a lease; or

(i) this Sublease not being effective as a lease for the Term; or

(j) any person named as Guarantor not executing or not executing effectively this guarantee and indemnity; or

(k) a liquidator disclaiming this Sublease.

### 22.8 Suspension of Guarantor's rights

The Guarantor may not:

(a) raise a set-off or counterclaim available to it or the Tenant against the Landlord in reduction of its liability under this guarantee and indemnity; or

(b) claim to be entitled by way of contribution, indemnity, subrogation, marshalling or otherwise to the benefit of any security or guarantee held by the Landlord in connection with this Sublease; or

(c) make a claim or enforce a right against the Tenant or its property; or

(d) prove in competition with the Landlord if a liquidator, provisional liquidator, receiver, administrator or trustee in bankruptcy is appointed in respect of the Tenant or the Tenant is otherwise unable to pay its debts when they fall due,

until all money payable to the Landlord in connection with this Sublease or the Tenant's occupation of the Premises is paid.

### 22.9 Reinstatement of guarantee

If a claim that a payment to the Landlord in connection with this Sublease or this guarantee and indemnity is void or voidable (including a claim under laws relating to liquidation, administration, insolvency or protection of creditors) is upheld, conceded or compromised, then the Landlord is entitled immediately as against the Guarantor to the rights to which it would have been entitled under this guarantee and indemnity if the payment had not occurred.

### 22.10 Costs

The Guarantor agrees to pay or reimburse the Landlord on demand for:

(a) the Landlord's costs, charges and expenses in making, enforcing and doing anything in connection with this guarantee and indemnity including, but not limited to, legal costs and expenses on a full indemnity basis; and

(b) all stamp duties, fees, taxes and charges which are payable in connection with this guarantee and indemnity or a payment, receipt or other transaction contemplated by it.

Money paid to the Landlord by the Guarantor must be applied first against payment of costs, charges and expenses under this clause 22.10 then against other obligations under this guarantee and indemnity.

### 22.11 Landlord may assign

The Landlord may assign its rights under this guarantee and indemnity.

## 23. Not used

## 24. Privacy

### 24.1 Definitions and interpretation

In this clause:

**NPP** means a National Privacy Principle.

**Personal Information** has the meaning given to this term in the Privacy Act.

**Privacy Act** means the *Privacy Act 1988* (Cth) and any guidelines issued by the Australian Information Commissioner under the Privacy Act.

### 24.2 Privacy

(a) The Tenant agrees that the Landlord may use Personal Information as described in the collection statement forwarded by the Landlord to the Tenant.

(b) The Tenant must, at the Landlord's request, assist the Landlord to discharge its obligations under NPP 1.5 by including a notice which satisfies the requirements of NPP 1.3 at the time the Tenant provides Personal Information to the Landlord about other individuals, including the Tenant's employees or contractors.

# 25. National Mutual Funds Management Limited

## 25.1 Capacity and responsibility of Responsible Entity

Despite any other provision of this Sublease, National Mutual Funds Management Limited ACN 006 787 720 (**Responsible Entity**):

(a) enters into this Sublease as responsible entity of the Trust and in no other capacity; and

(b) subject to the limitations on its liability specified in this Sublease, is responsible for performance of all of the obligations of the Landlord under this Sublease, other than the Landlord's Obligations, as if all references in this Sublease to the Landlord (except those relating to the Landlord's Obligations) were references to the Responsible Entity.

## 25.2 Responsible Entity to procure Landlord to comply with Landlord's Obligations

Subject to the limitations on the liability of the Responsible Entity set out in this sublease, the Responsible Entity must do all things reasonably required to procure the Landlord to comply with the Landlord's Obligations.

## 25.3 Limitation of liability

Any liability or obligation of the Responsible Entity arising under or in connection with this Sublease:

(a) is limited; and

(b) can be enforced against the Responsible Entity only,

to the extent to which it can be and is in fact satisfied out of the property of the Trust out of which the Responsible Entity is actually indemnified for the liability under the Constitution.

## 25.4 Application of limitation of liability

The limitation of the Responsible Entity's liability under this clause applies despite any other provision of this Sublease and extends to all liabilities and obligations of the Responsible Entity in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Sublease.

## 25.5 Responsible Entity's liability must be limited

Despite any other provision of this Sublease, the Responsible Entity is not obliged to do or refrain from doing anything under this Sublease unless the Responsible Entity's liability is limited in the manner set out in this clause.

## 25.6 Action by Tenant

The Tenant must not take any action of any kind against the Responsible Entity in any capacity other than as the responsible entity of the Trust.

## 25.7 Fraud, negligence or breach of trust

Despite any other provision of this Sublease:

(a) the limitation of the Responsible Entity's liability under this clause shall, subject to clause 25.7(b) not apply to any obligation or liability of the Responsible Entity to the extent that it is not satisfied because there is a reduction in the extent of the Responsible Entity's indemnification out of the assets of the Trust as a result of the Responsible Entity's fraud, negligence or breach of trust; and

(b) nothing in this clause shall make the Responsible Entity liable to any claim for an amount greater than the amount which the Tenant would have been able to claim and recover from the assets of the Trust in relation to the relevant liability if the Responsible Entity's

right of indemnification out of the assets of the Trust had not been prejudiced by fraud, negligence or breach of trust.

### 25.8 Clause survives termination

This clause 25 shall survive the expiration, termination or repudiation of this Sublease.

## 26. National Mutual Life Nominees Pty Limited

### 26.1 Capacity and liability of Landlord

Despite any other provision of this Sublease, the Landlord:

(a) enters into this Sublease in its capacity as the custodian appointed by the Responsible Entity; and

(b) shall only be liable for performance of the Landlord's Obligations on the basis set out in this clause; and

(c) shall not be liable for performance of the Landlord's obligations under this Sublease except for the Landlord's Obligations and then only on the basis set out in this clause.

### 26.2 Limitation of liability of Landlord

Any liability of the Landlord arising under or in connection with this Sublease:

(a) is limited; and

(b) can be enforced against the Landlord only,

to the extent to which the Landlord is actually indemnified for that liability by the Responsible Entity.

### 26.3 Application of limitation of liability

The limitation of the Landlord's liability under this clause applies despite any other provision of this Sublease and extends to all liabilities of the Landlord in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Sublease.

### 26.4 Landlord's liability must be limited

Despite any other provision of this Sublease, the Landlord is not obliged to do or refrain from doing anything under this Sublease unless the Landlord's liability is limited in the manner set out in this clause.

### 26.5 Action by Tenant

The Tenant must not take any action of any kind against the Landlord in any capacity other than as the custodian appointed by the Responsible Entity.

### 26.6 Fraud, negligence or breach of trust

Despite any other provision of this Sublease:

(a) the limitation of the Landlord's liability under this Sublease shall, subject to clause 26.6(b), not apply to any obligation or liability of the Landlord to the extent that it is not satisfied because there is a reduction in the extent of the Landlord's indemnification by the Responsible Entity as a result of the Landlord's fraud, negligence or breach of custody arrangements with the Responsible Entity; and

(b) nothing in this clause shall make the Landlord liable to any claim for an amount greater than the amount which the Tenant would have been able to claim and recover if the Landlord's right to be indemnified by the Responsible Entity had not been prejudiced by fraud, negligence or breach of custody arrangements with the Responsible Entity.

### 26.7 Clause survives termination

This clause 26 shall survive the expiration, termination or repudiation of this Sublease.

## 27. Tenant's acknowledgments

The Tenant acknowledges that:

(a) this lease is a sublease and is dependent for its existence on the continuation of the Head Lease;

(b) it has read and satisfied itself with respect to the provisions of the Head Lease;

(c) it has received legal advice with respect to the provisions of the Head Lease and this Sublease;

(d) the Landlord's ability to perform its obligations under this Sublease is limited by and subject to the provisions of the Head Lease;

(e) the Landlord will not be in breach of any provision of this Sublease (which has a corresponding provision in the Head Lease) where the Head Landlord is in breach of the corresponding provision in the Head Lease and the Landlord has not contributed to that breach;

(f) any right or power which may be exercised by the Landlord under this Sublease may also be exercised by the Head Landlord and vice versa and the Tenant will not in any way obstruct or impede the Head Landlord in its lawful exercise of such rights and powers;

(g) the Head Landlord may exercise any right or power by dealing directly with the Tenant and the Tenant must inform the Landlord of all such actions by the Head Landlord; and

(h) if any consent or approval is required by the Landlord under this Sublease, the consent or approval of the Head Landlord must (if it is required under the Head Lease) also be obtained under the Head Lease and the Landlord may withhold its consent or approval if the consent or approval of the Head Landlord is withheld.

## 28. Tenant's obligations

(a) The Tenant must not do any matter or thing which might prejudice or give grounds for the determination by the Head Landlord of the estate or interest of the Landlord in the Premises and the Tenant indemnifies the Landlord against any liability under the provisions of the Head Lease where such liability is attributable to the default of the Tenant under the terms and conditions of this Sublease.

(b) The Tenant must, to the extent it is not inconsistent with this Sublease, comply with the terms, conditions and covenants to be performed by the Landlord under the Head Lease. To the extent of any inconsistency, the terms of this Sublease prevail over the terms of the Head Lease.

## 29. Landlord's obligations

The Landlord must:

(a) pay the rent reserved under the Head Lease and otherwise perform and observe all its obligations under the Head Lease to the extent that those obligations are not the responsibility of the Tenant under this Sublease; and

(b) use reasonable endeavours to have the Head Landlord perform its obligations under the Head Lease so far as they may be relevant to or affect the Tenant's use and occupation of the Premises but the Landlord has no obligation to commence or maintain any action, suit or proceeding whether at law or in equity or to otherwise incur costs or expenses other than of an administrative or minor nature; and

(c) not surrender the Head Lease without the Tenant's consent; and

(d) not do anything that may end the Head Lease before its expiry date; and

(e) inform the Tenant of any notice the Landlord receives under the Head Lease and of anything else that may affect the performance of the Tenant's obligations under this Sublease; and

(f) ensure that the Head Lease subsists (including by way of exercising any necessary option to renew the Head Lease) such that the Tenant's interest under this Sublease does not determine before the expiry of the Term.

## 30. Superior interest

(a) If a person other than the Landlord becomes entitled to receive the Rent reserved under this Sublease (either by operation of law or otherwise) the Tenant agrees that:

(i) that person will have the benefit of all covenants and agreements on the part of the Tenant under this Sublease; and

(ii) it will, at the cost of the Landlord, enter into any covenant in that regard with that person as the Landlord may reasonably require.

(b) The Tenant will, at all times during the Term, permit (on being given reasonable notice, except in the case of an emergency):

(i) the Landlord; and

(ii) any person having a superior or concurrent estate or interest in the Building to or with the Landlord,

to exercise the Landlord's powers under this Sublease to enter and view the Premises and to carry out repairs, renovations, maintenance and other work on the Premises (insofar as this work has not been carried out by the Tenant under this Sublease) and otherwise to exercise or perform their lawful rights or obligations in regard to such superior or concurrent estate or interest in the Building, subject to the Tenant's rights under this Sublease.

(c) If the Head Landlord at any time gives to the Tenant a notice or leaves a notice on the Premises, the Tenant must promptly give a copy of that notice to the Landlord:

## 31. Termination of Head Lease

If the Head Lease is terminated (otherwise than by effluxion of time) this Sublease terminates without releasing either party from any liability they may have to the other in connection with any breach of any of the provisions of this Sublease which occurred before the termination.

## 32. Validity

If any term, covenant or condition of this Sublease or the application of them to any person or circumstance is or becomes invalid or unenforceable, the remaining terms, covenants and conditions of this Sublease will not be affected and each term, covenant and condition of this Sublease is valid and enforceable to the fullest extent permitted by Jaw.

## 33. Terms of Head Lease

(a) The Tenant acknowledges and agrees that this Sublease must be read and construed as though the following clauses of the Head Lease are set out in this Sublease in full, and a reference to 'Lessee' in those clauses is a reference to the Tenant and a reference to the 'Lessor' in those clauses is a reference to the Head Landlord:

(i) clause 9.12 (Further Construction);

(ii) clause 9.16 (Adjoining Areas); and

(iii) clause 9.17 (Theatres and activities in the area).

(b) The Tenant acknowledges and agrees that if the Head Lease is varied in accordance with clause 9.15 of the Head Lease, then this Sublease must be amended to accommodate that variation, provided that such variation does not materially derogate from the rights of the Tenant under this Sublease.

(c) Despite clause 33(b), the Landlord must not agree to any variation of the Head Lease which may materially affect the Tenant's rights or obligations under this Sublease without first obtaining the consent of the Tenant, which may be withheld in the Tenant's absolute discretion.

## 34. Disclosure of construction activities by the Contractor

(a) The Landlord discloses that the Contractor will be carrying out construction activities within the Redevelopment Area that may create noise, dust, vibrations, disruptions to traffic and other inconveniences to the Tenant.

(b) The Landlord discloses that the Walsh Bay redevelopment in the Redevelopment Area is estimated to be completed by the end of 2009, but market conditions or any other external factors may affect this date.

(c) Subject to clause 34(d), the Tenant acknowledges the matters disclosed in clauses 34(a) and 34(b) and agrees that it will:

(i) not make any claim in respect to those matters; and

(ii) include provisions to the effect of this clause 34 in any sub-sublease, licence or assignment of this Sublease.

(d) The Tenant may not object to any of the Contractor's construction activities within the Redevelopment Area, if the activities of the Contractor are in accordance with the requirements of any relevant Authorities and any relevant development consents including the Master Plan Approval.

(e) The Landlord discloses that under the Bond Store 1 Agreement to Lease the Contractor has agreed to attempt to minimise the impact of any noise or other potential interference upon the use of the completed Building on the Land, but not to the extent that it may result in the Contractor suffering any material delay, disruption or additional costs in respect of its works and subject always to clauses 34(a) to 34(d).

## 35. Other disclosures regarding noise, etc

(a) The Tenant acknowledges that the Darling Harbour No. 3 Wharf and the Emergency Response and Maritime Operations Centre (ERMOC) located in Moore's Bond adjacent to Pier 8/9 and the Land are operated 24 hours a day by the Newcastle Port Corporation and generate noise, traffic and other impacts associated with port operations.

(b) The Tenant must not do or allow anything to be done which may materially impact on the existing operation of the Darling Harbour No. 3 Wharf and the operation of the ERMOC and must ensure that any occupier of any part of the Land is notified of the existing operations.

(c) The Tenant acknowledges that there will be theatres, performance spaces, retail outlets and exhibition spaces in the vicinity of the Land, and in relation to the Sydney Theatre across from the Land. Those theatres and spaces by their operation may, at any time of the day or night, generate noise, traffic and other impacts associated with the operation of such facilities including from activities such as loading and unloading and delivery of goods, scenery and equipment. The Tenant may not make any claim or object in respect of these matters.

## 36. Easements

(a) The Tenant acknowledges that as at the date of this Sublease all:

(i) easements, restrictions on use and positive covenants benefiting or burdening the Premises and burdening or benefiting the Land or land in the Precinct or benefiting any relevant Authority (as the case may be);

(ii) agreements and arrangements as between the owners and occupiers of the Land with owners and occupiers of other properties in the Precinct or with any relevant Authority (as the case may be);

(iii) rights, privileges, liabilities and obligations; and

(iv) all dedications of land,

which are or may be:

(v) required by any relevant Authority or any service provider; or

(vi) necessary or desirable for the proper management of the Premises, the Land or the Precinct or part of the Precinct; or

(vii) required under the Precinct Management Agreement, may not have been created or established.

(b) The Tenant must not object to the creation or establishment of anything set out in clause 36(a) unless such creation or establishment would materially and adversely interfere with or lessen the enjoyment of rights granted to the Tenant under this Sublease.

(c) Subject to clause 36(b), the Tenant must at the Landlord's sole cost, consent to and sign any documents which may be necessary to create, establish or otherwise give effect to anything set out in clause 36(a).

# 37. Car Parking

## 37.1 Car Park Licence

(a) Subject to clause 37.1(b) (and unless the Landlord and the Tenant otherwise agree), the Landlord must maintain (or cause to be maintained) throughout the Term the Car Park Licence.

(b) The Tenant must comply with its obligations under the Car Park Licence.

(c) The benefit of this clause 37 is intended to attach to and run with the Premises.

# Signing page

Certified correct for the purposes of the *Real Property Act 1900*

**Landlord**

(H) I certify that I am an eligible witness and that the lessor's attorneys signed this dealing in my presence.
[See note** below]

Signature of witness

Name of witness

Address of witness CHARLOTTE BARNES
PARALEGAL
LEVEL 18, 33 ALFRED ST
SYDNEY, NSW, 2000

Certified correct for the purposes of the Real Property Act 1900 by the lessor's attorneys who signed this dealing pursuant to the power of attorney specified.

Signature of attorney

BYRON RICHARD TISCH
Attorney's name

Signature of attorney

Attorney's name

Both signing on behalf of:
**National Mutual Life Nominees Pty Limited (ABN 98 004 387 133)**
Signing on behalf of

Power of attorney - Book 4746
- No 35

**Responsible Entity**

I certify that I am an eligible witness and that the lessee's attorneys signed this dealing in my presence.
[See note** below]

Signature of witness

Name of witness CHARLOTTE BARNES
PARALEGAL
LEVEL 18, 33 ALFRED ST
SYDNEY, NSW, 2000

Address of witness

Certified correct for the purposes of the Real Property Act 1900 by the lessee's attorneys who signed this dealing pursuant to the power of attorney specified.

Signature of attorney

BYRON RICHARD TISCH
Attorney's name

Signature of attorney

Attorney's name

Both signing on behalf of:
**National Mutual Funds Management Limited (ABN 32 006 787 720)**
Signing on behalf of

Power of attorney - Book 4746
- No 35

**Sublessee**

I certify that I am an eligible witness and that an authorised officer of the lessee signed this dealing in my presence. [See note** below].

Signature of witness

PATTI PHRACHANH

Name of witness

20 WINDMILL ST, WALSH BAY

Address of witness

Certified correct for the purposes of the Real Property Act 1900 by the authorised officer named below.

Signature of authorised officer

GRANT GILFILLAN

Authorised officer's name

CEO & DIRECTOR

Authority of officer

**Newcastle Port Corporation (ABN 50 825 884 846)**

Signing on behalf of

# Annexure B – Rules

Sublease

**Lease of Levels 4 and 7, Bond One, 20 Windmill Street, Walsh Bay NSW**

## Parties

| | |
|---|---|
| Name | **National Mutual Life Nominees Limited** |
| ABN | 32 006 787 720 |
| Short form name | **Landlord** |
| Notice details | 33 Alfred Street, Sydney NSW 2000 |

| | |
|---|---|
| Name | **National Mutual Funds Management Limited** |
| ABN | 98 004 387133 |
| Short form name | **Responsible Entity** |
| Notice details | 33 Alfred Street, Sydney NSW 2000 |

| | |
|---|---|
| Name | **Newcastle Port Corporation** |
| ABN | 50 825 884 846 |
| Short form name | **Tenant** |
| Notice details | Port Authority of New South Wales<br>Level 4, 20 Windmill Street \| Walsh Bay NSW 2000 Australia<br>PO Box 25, Millers Point \| NSW 2000 Australia |

## Rules

The provisions of the Sublease apply to these Rules.

1. The Tenant may not:
   - (a) smoke in the Building or within 10 metres of any exit or entrance to the Building;
   - (b) put up signs, notices, advertisements, blinds or awnings, antennae or receiving dishes or install vending or amusement machines without the Landlord's approval which must not be unreasonably withheld;
   - (c) hold auction, bankrupt or fire sales in the Premises;
   - (d) keep an animal or bird on the Premises;
   - (e) use a business name which includes words connecting the business name with the Building without the Landlord's approval;
   - (f) remove floor coverings from where they were originally laid in the Premises without the Landlord's approval which must not be unreasonably withheld;
   - (g) do anything to the floor coverings in the Building which affects any guarantee in connection with them if the Landlord has given the Tenant a notice setting out the relevant terms of the guarantee;
   - (h) use any method of heating, cooling or lighting the Premises other than those provided or approved by the Landlord (who must not unreasonably withhold its approval);
   - (i) if there is a goods lift in the Building, use the escalators or passenger lifts to carry goods or equipment;
   - (j) operate a musical instrument, radio, television or other equipment that can be heard outside the Premises;
   - (k) throw anything out of any part of the Building or down lift wells;
   - (l) move heavy or bulky objects through the Building without the Landlord's approval which must not be unreasonably withheld;
   - (m) obstruct or interfere with:

(i) windows in the Premises except by internal blinds or curtains approved by the Landlord who must not unreasonably withhold its approval;

(ii) any air vents, air conditioning ducts or skylights in the Premises; or

(iii) the Common Areas;

(n) interfere with directory boards provided by the Landlord; or

(o) bring any bicycle into the entrance foyer of, or the lifts in the Building.

2. The Tenant must:

(a) put up signs in the Premises prohibiting smoking if required by the Landlord;

(b) if the Landlord approves the Tenant's use of a business name which is connected with the Building, terminate any right it has to use that business name on the date it must vacate the Premises;

(c) secure the Premises when they are unoccupied and comply with the Landlord's reasonable directions about Building security;

(d) submit the form in which it requires its name and description to appear on the directory board for the Building to the Landlord for its approval (which must not be unreasonably withheld), make whatever changes the Landlord reasonably requires and pay the Landlord on demand the cost of placing that information on the directory boards; and

(e) comply with any reasonable directions of the Landlord in connection with the disposal of or recycling of rubbish.

# Annexure C – Precinct Plan

Sublease

**Lease of Levels 4 and 7, Bond One, 20 Windmill Street, Walsh Bay NSW**



BT

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BT

B. A. Fitzpatrick

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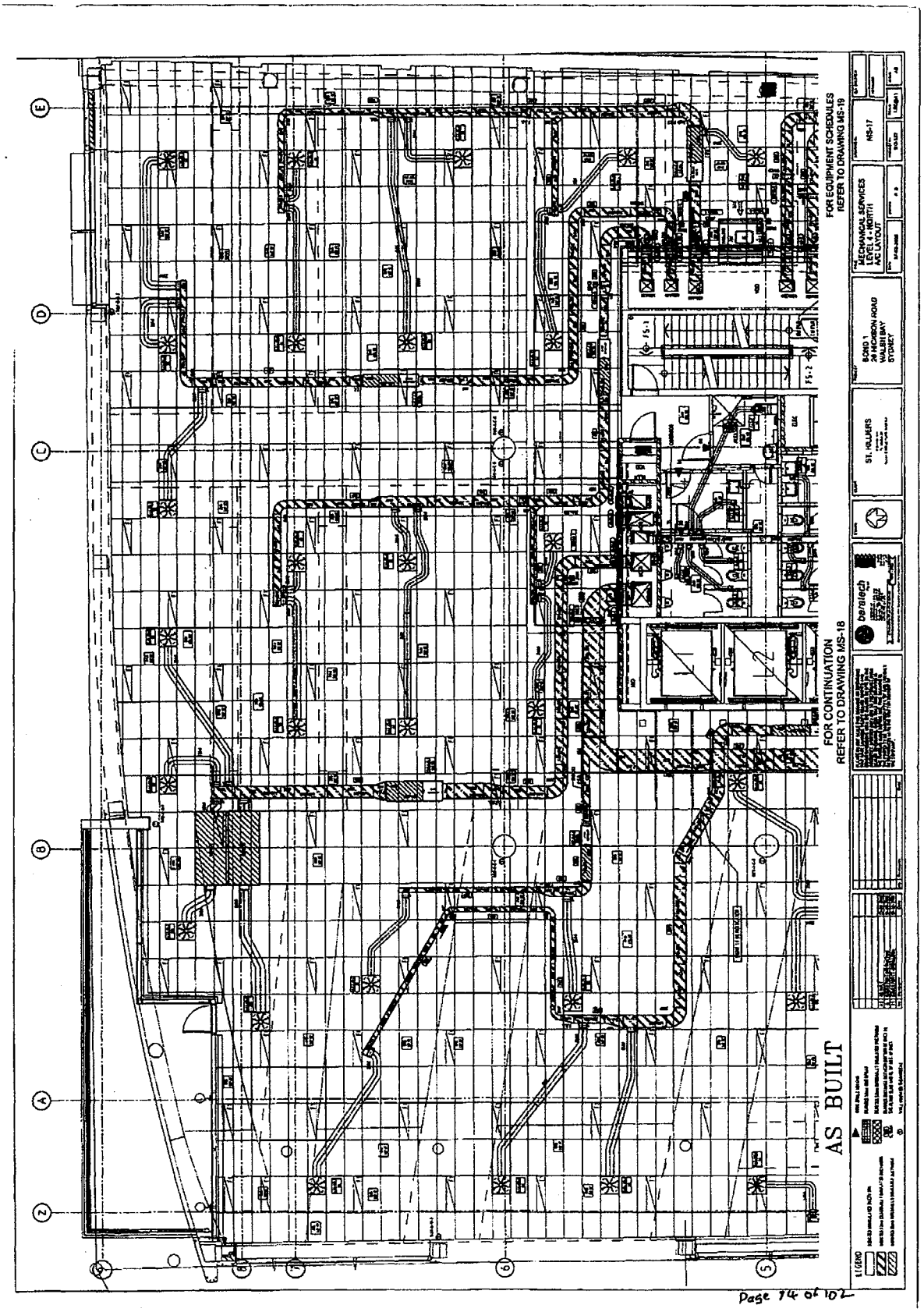
BT

# Annexure D – Specifications

Sublease

**Lease of Levels 4, 5 and 7, Bond One**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FOR EQUIPMENT SCHEDULES
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MECHANICAL SERVICES
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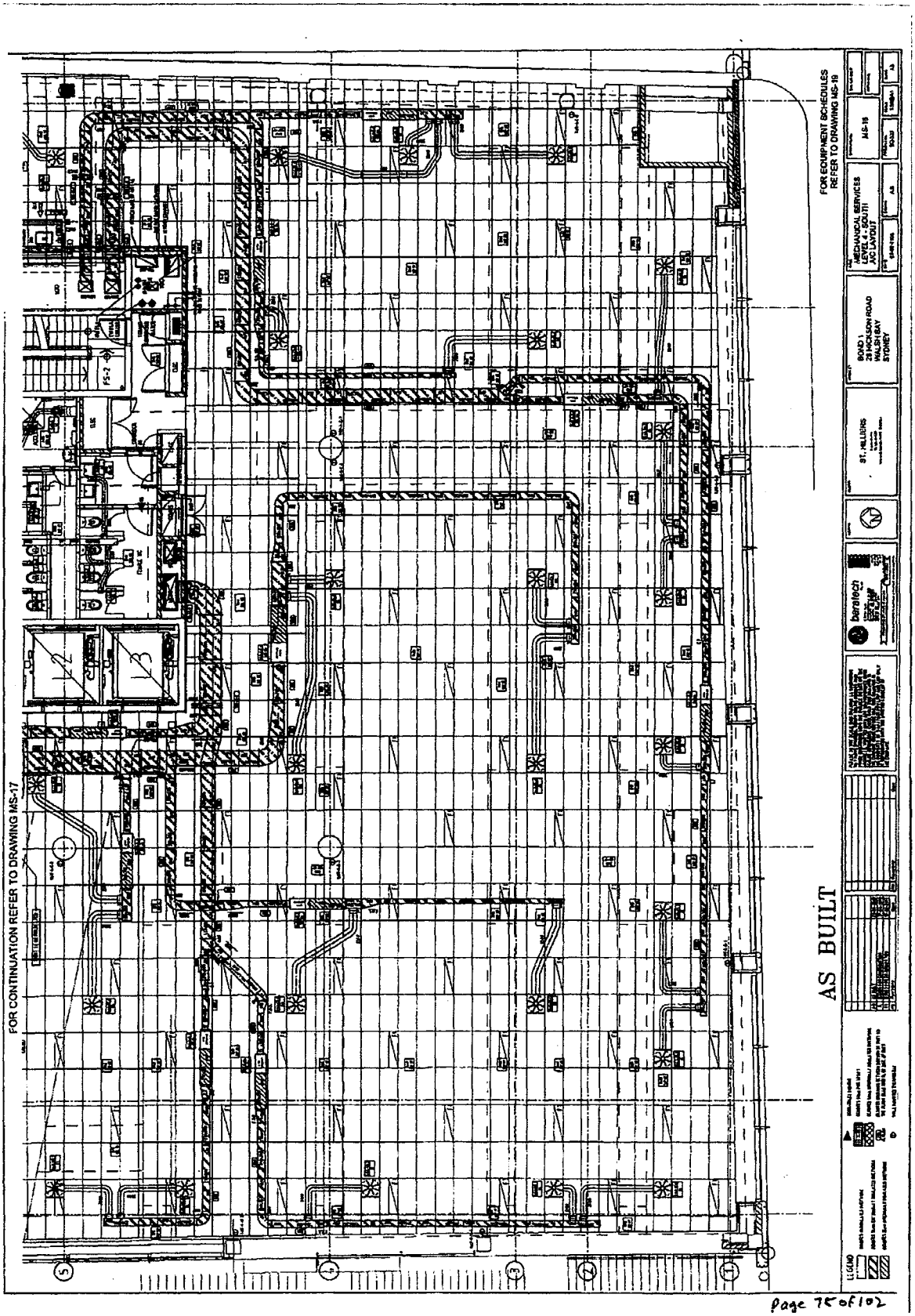
A/C LAYOUT
MS-17
BOND 1
24 HICKSON ROAD
WALSH BAY
SYDNEY
ST. HILLIERS
LEGEND





BT

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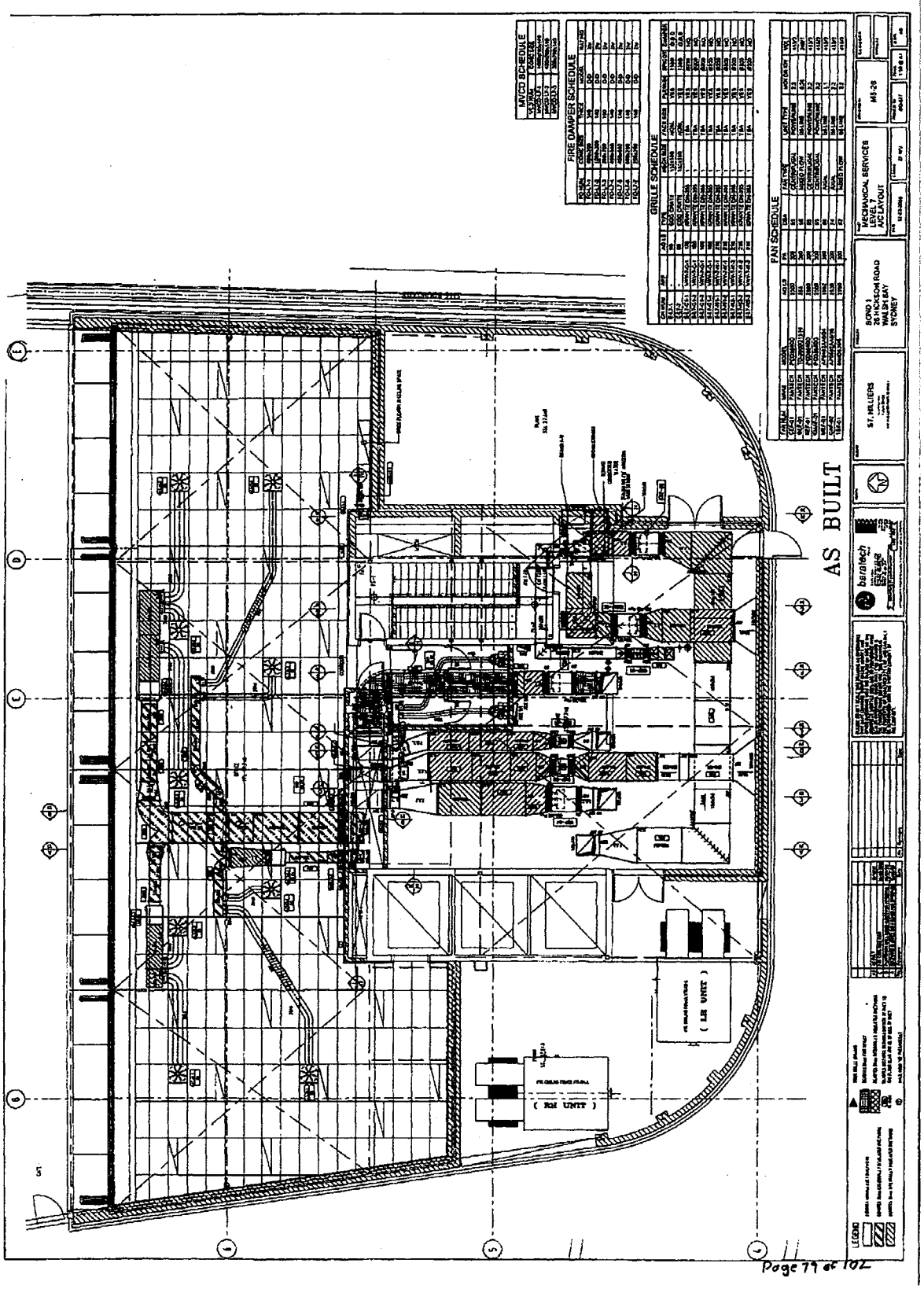


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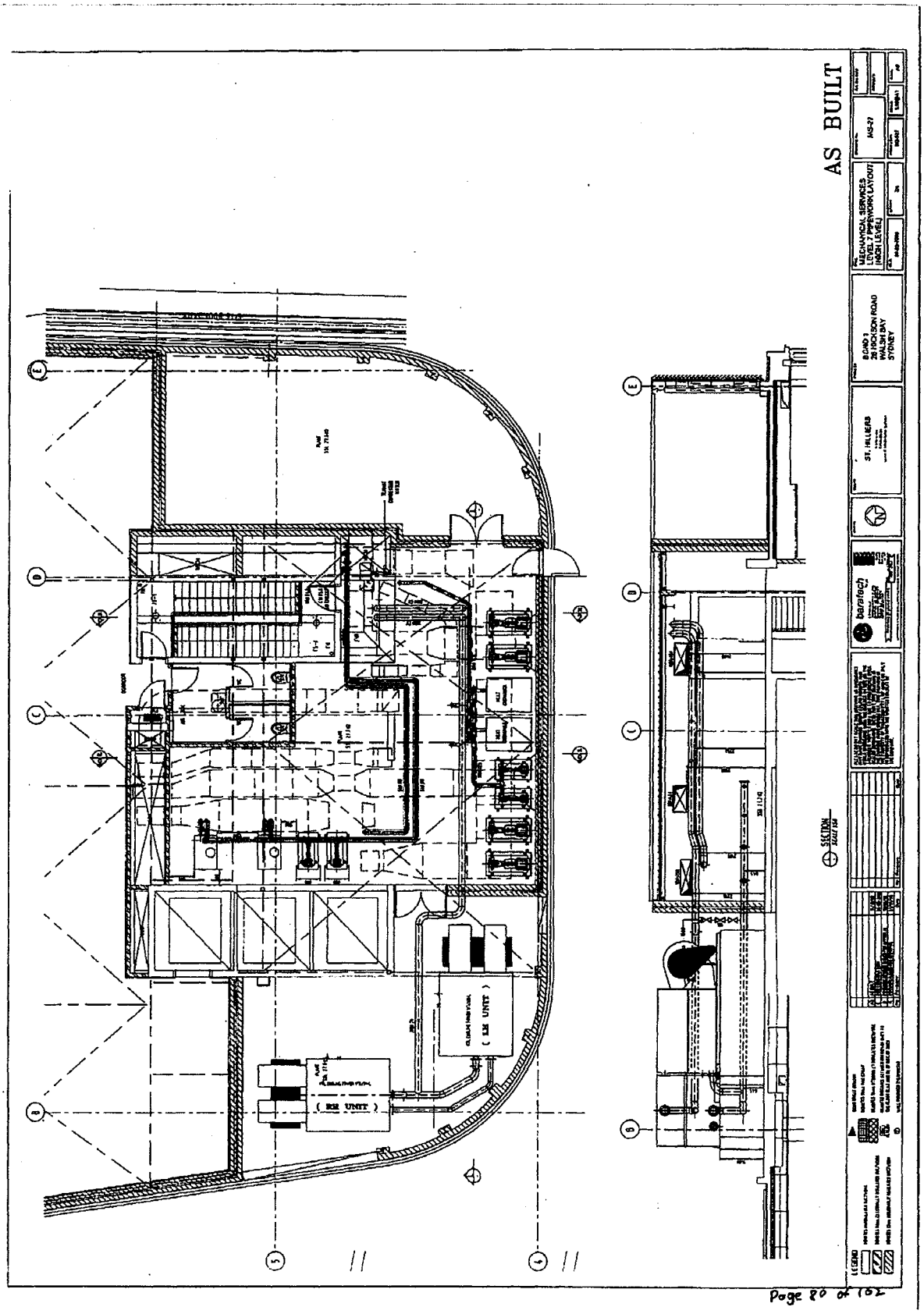


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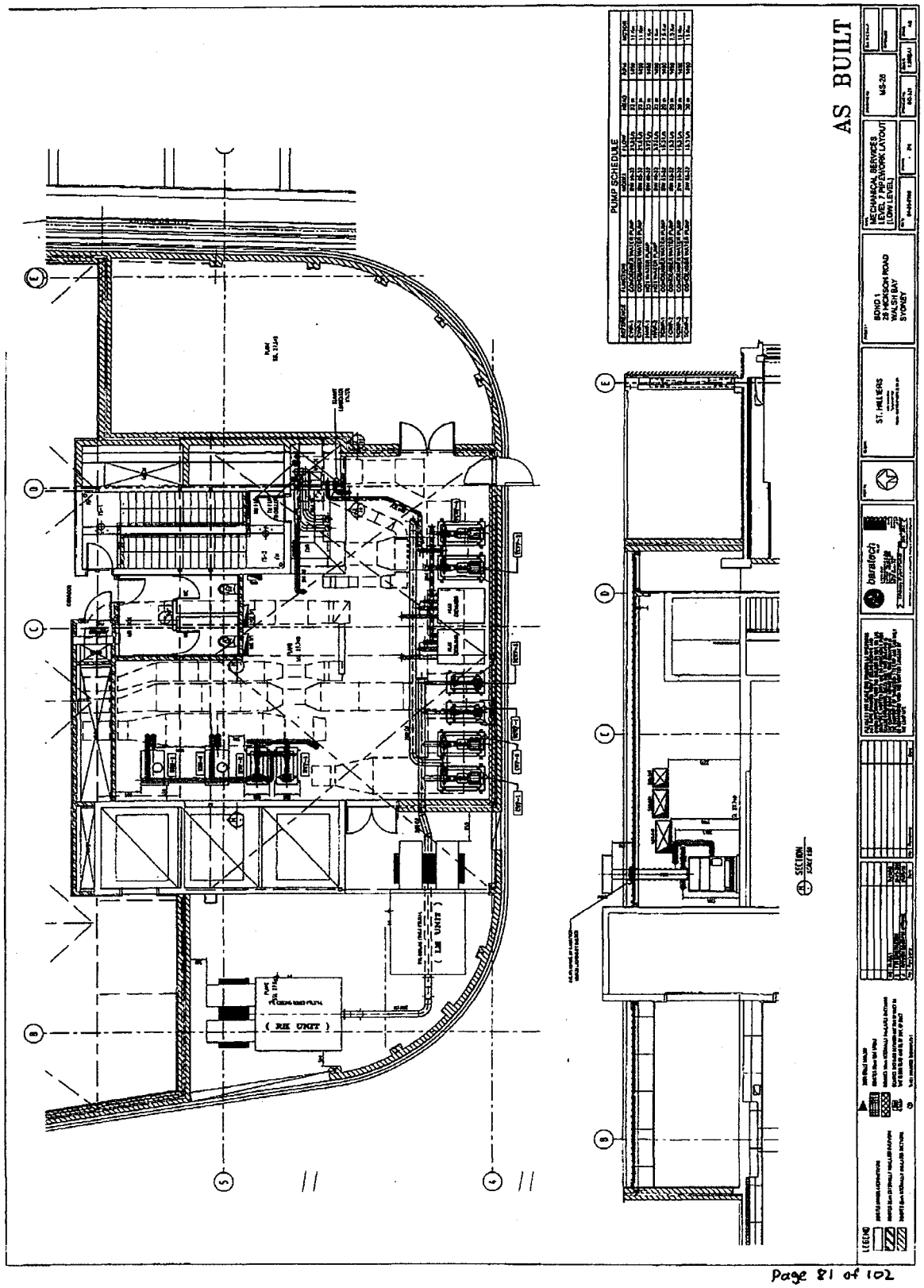


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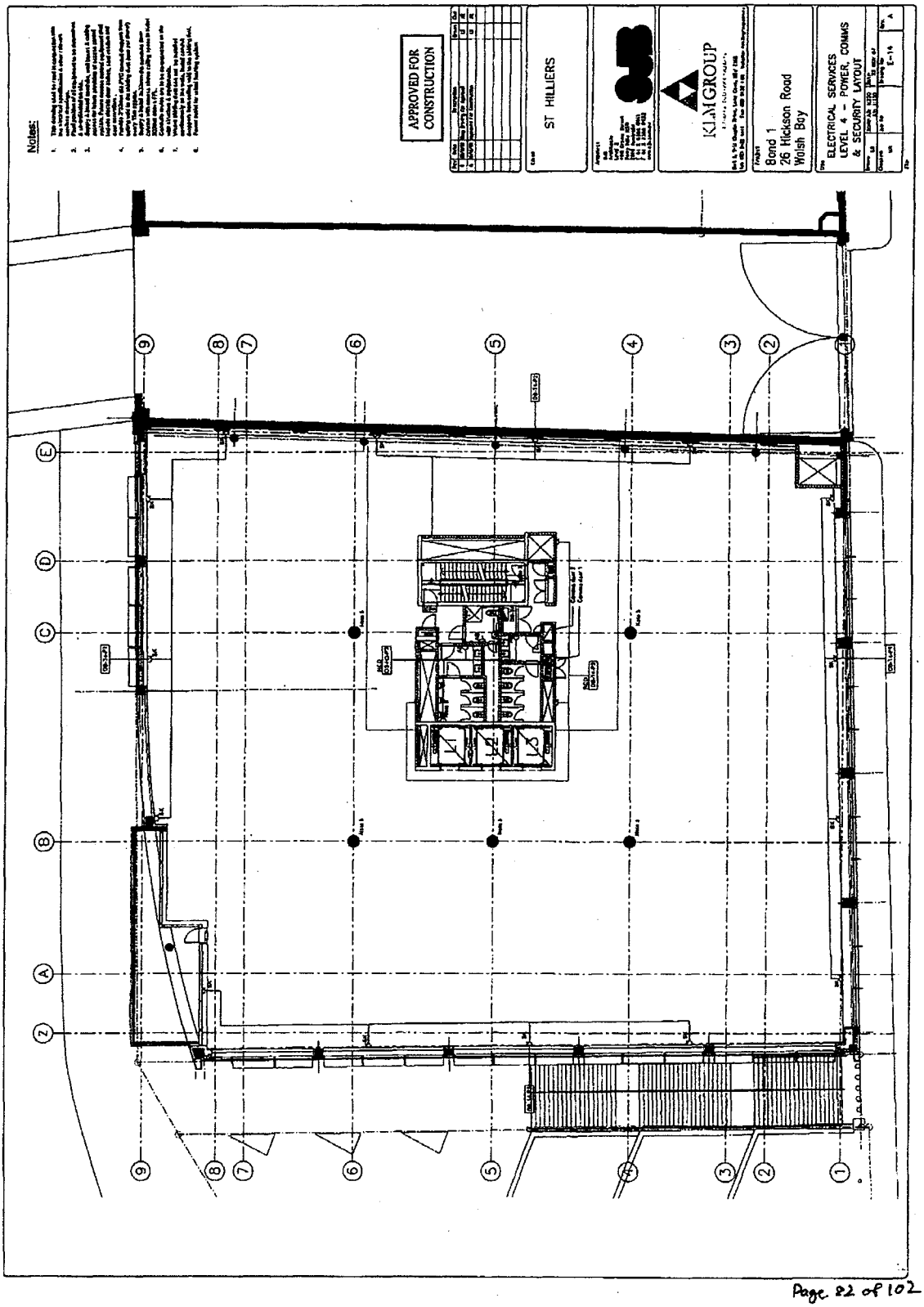


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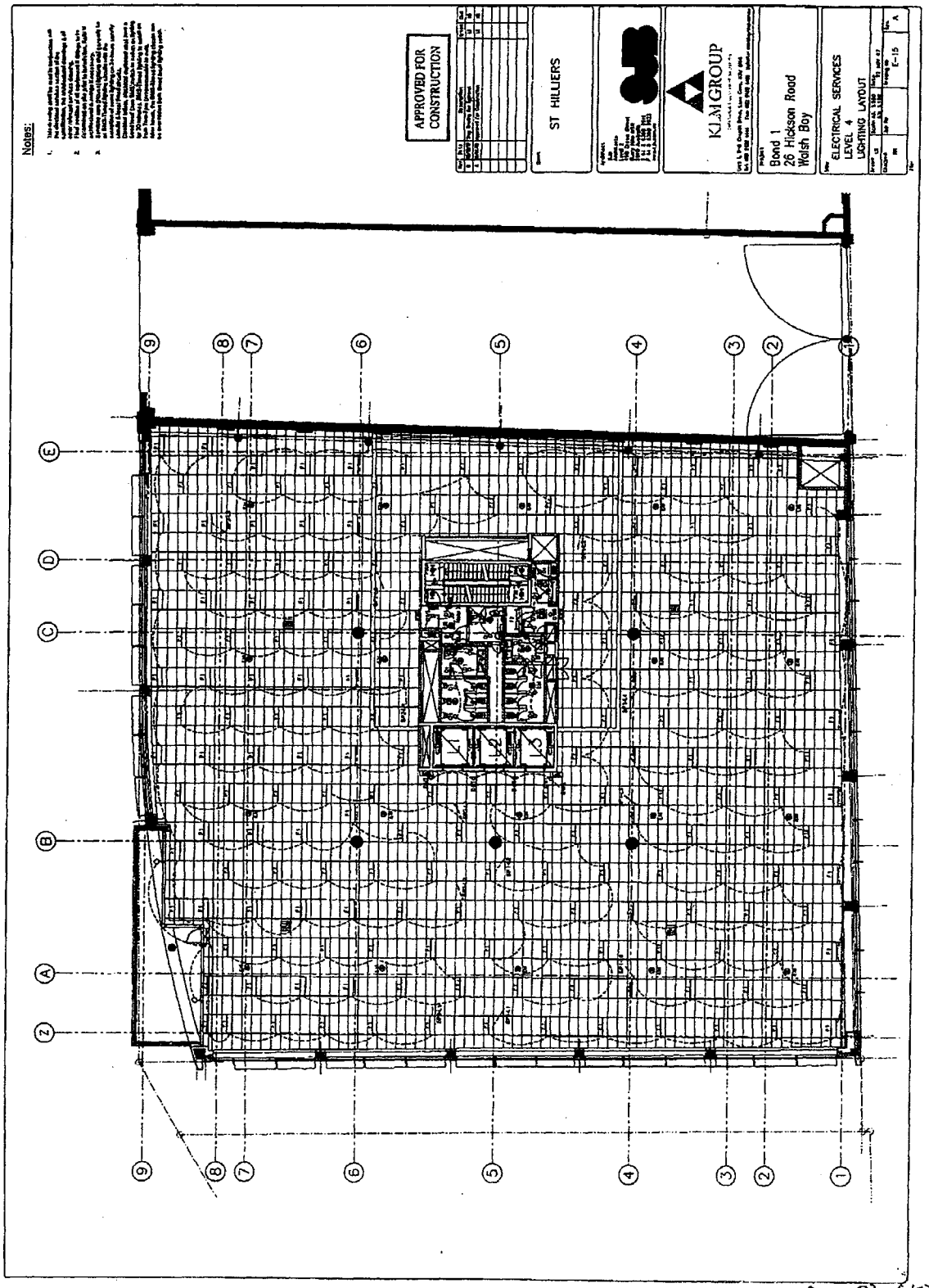


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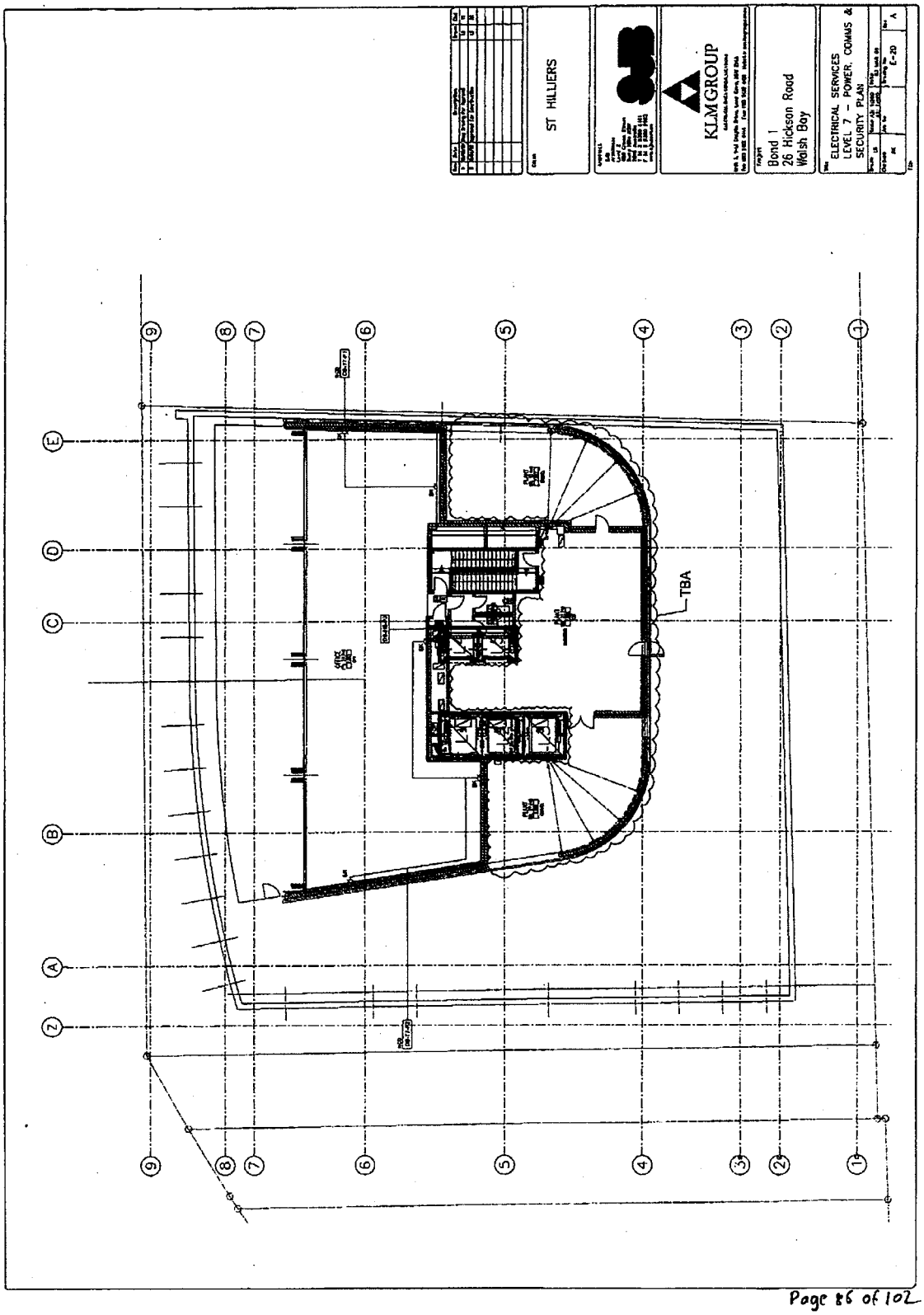


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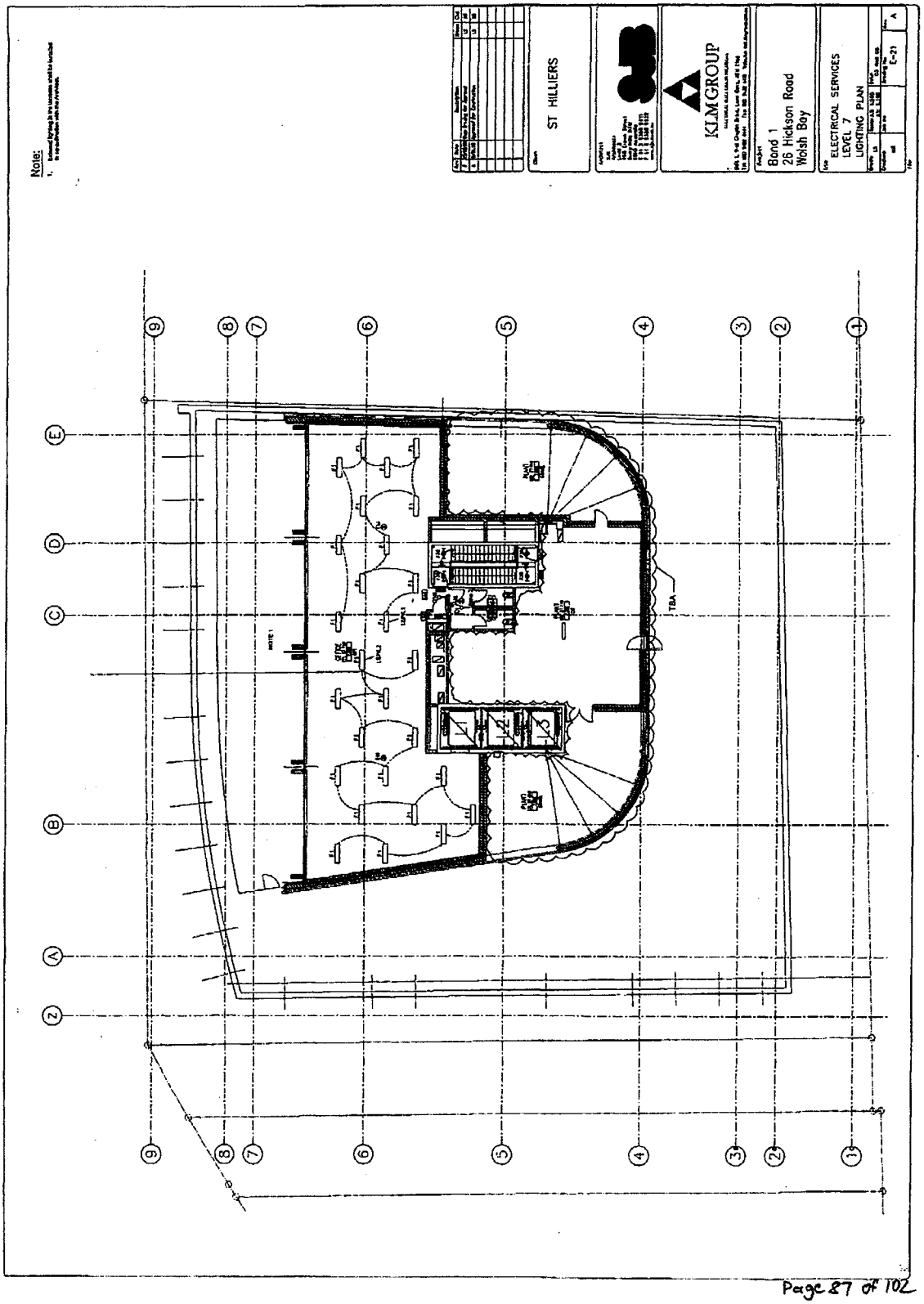


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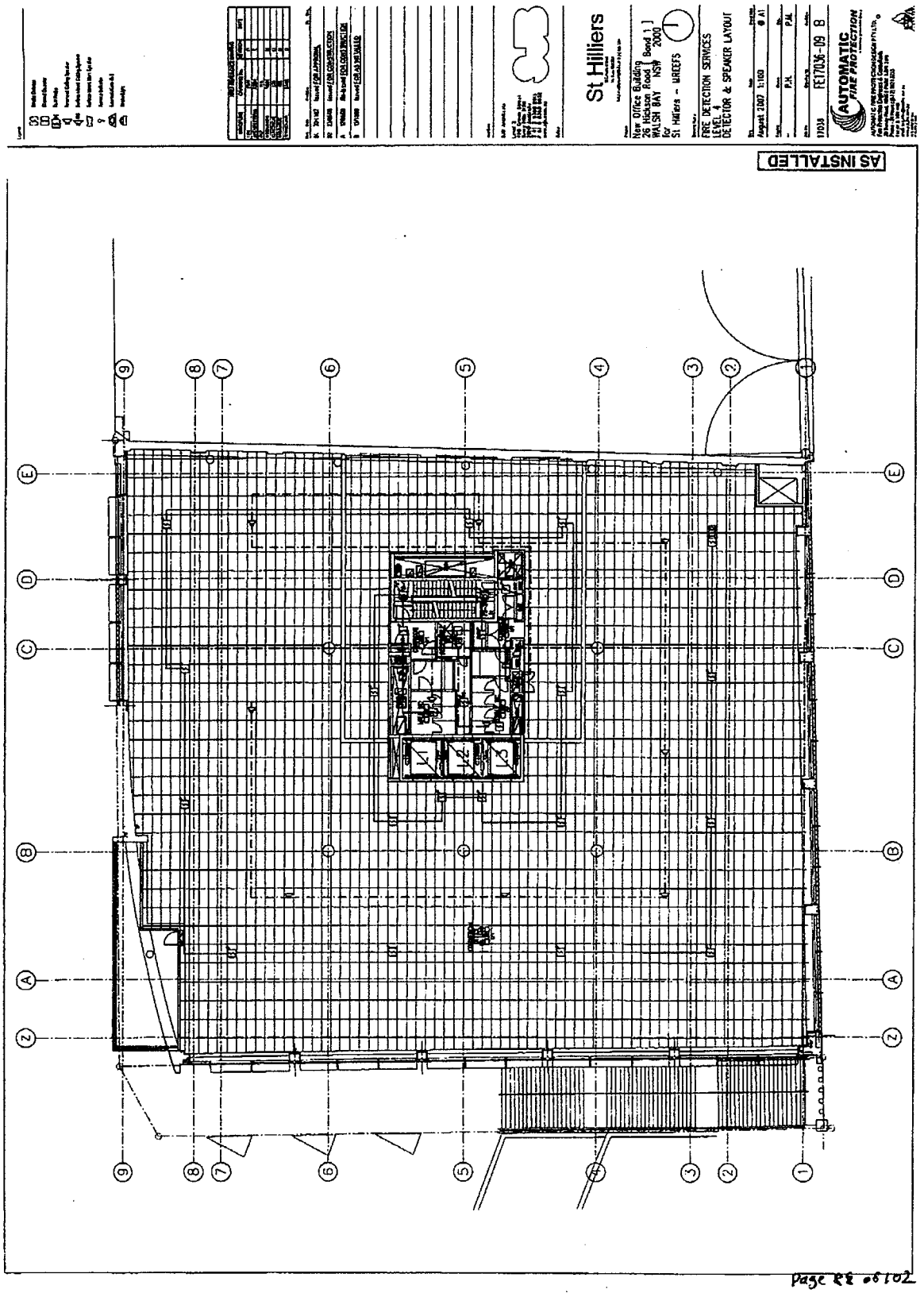


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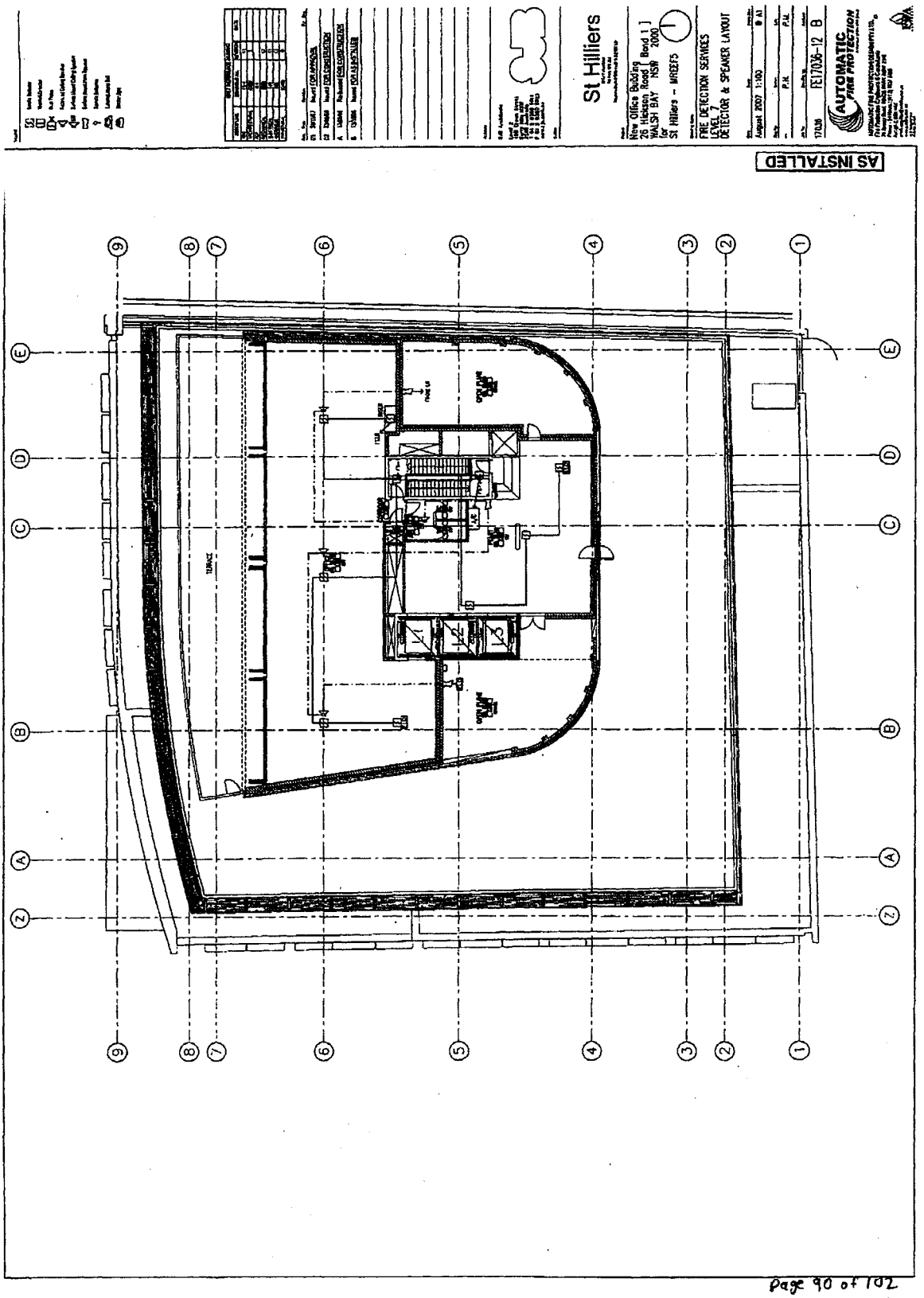


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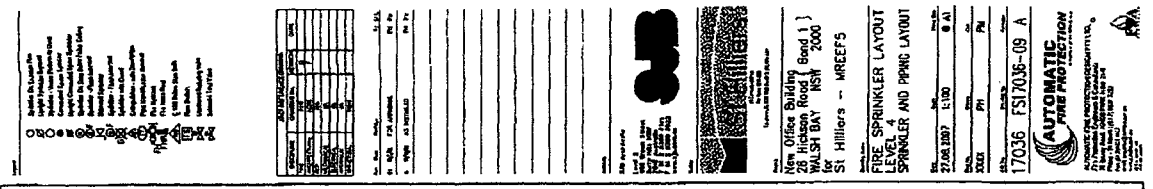


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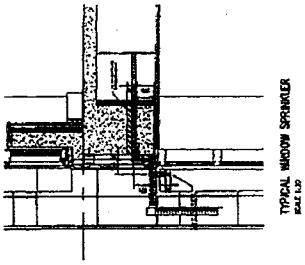


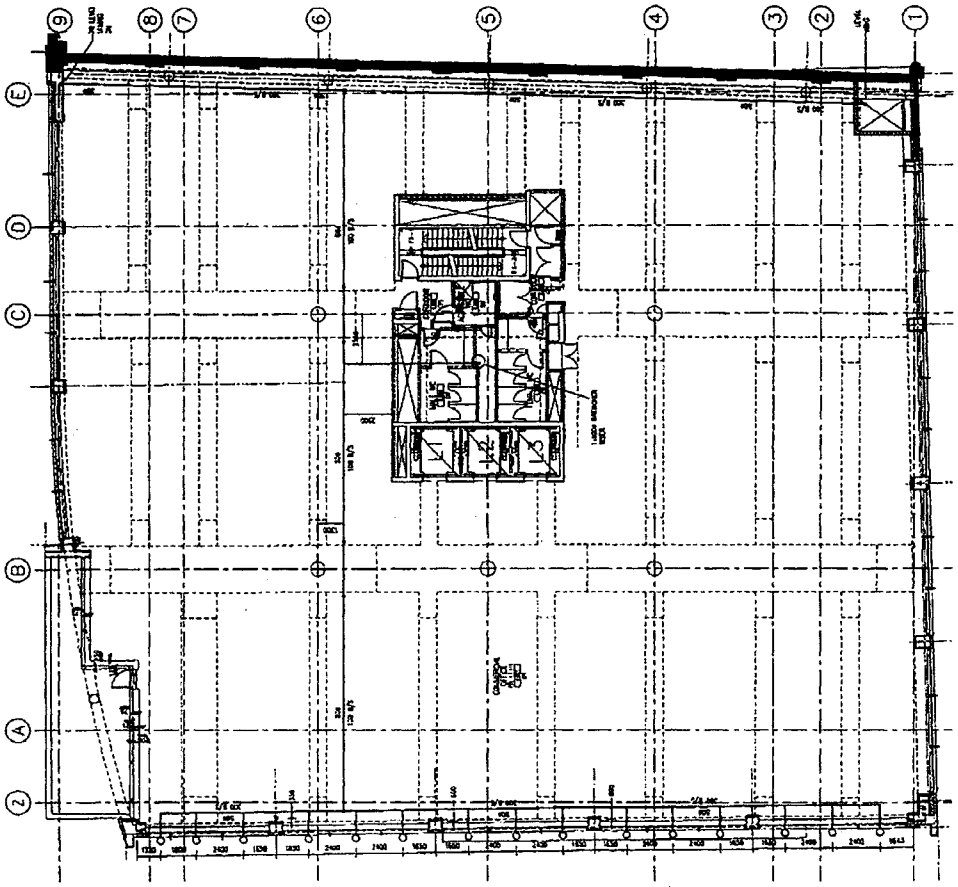

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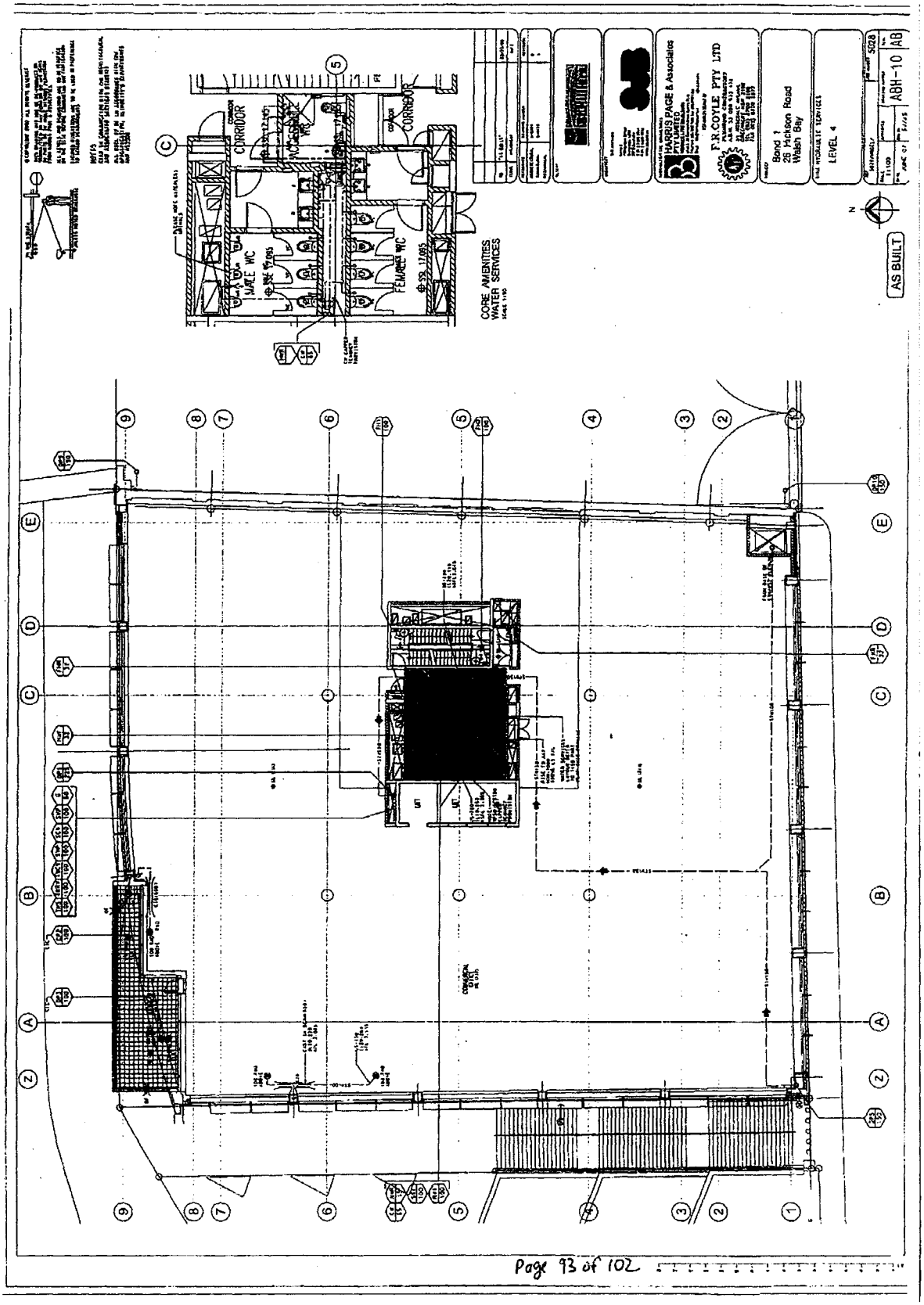


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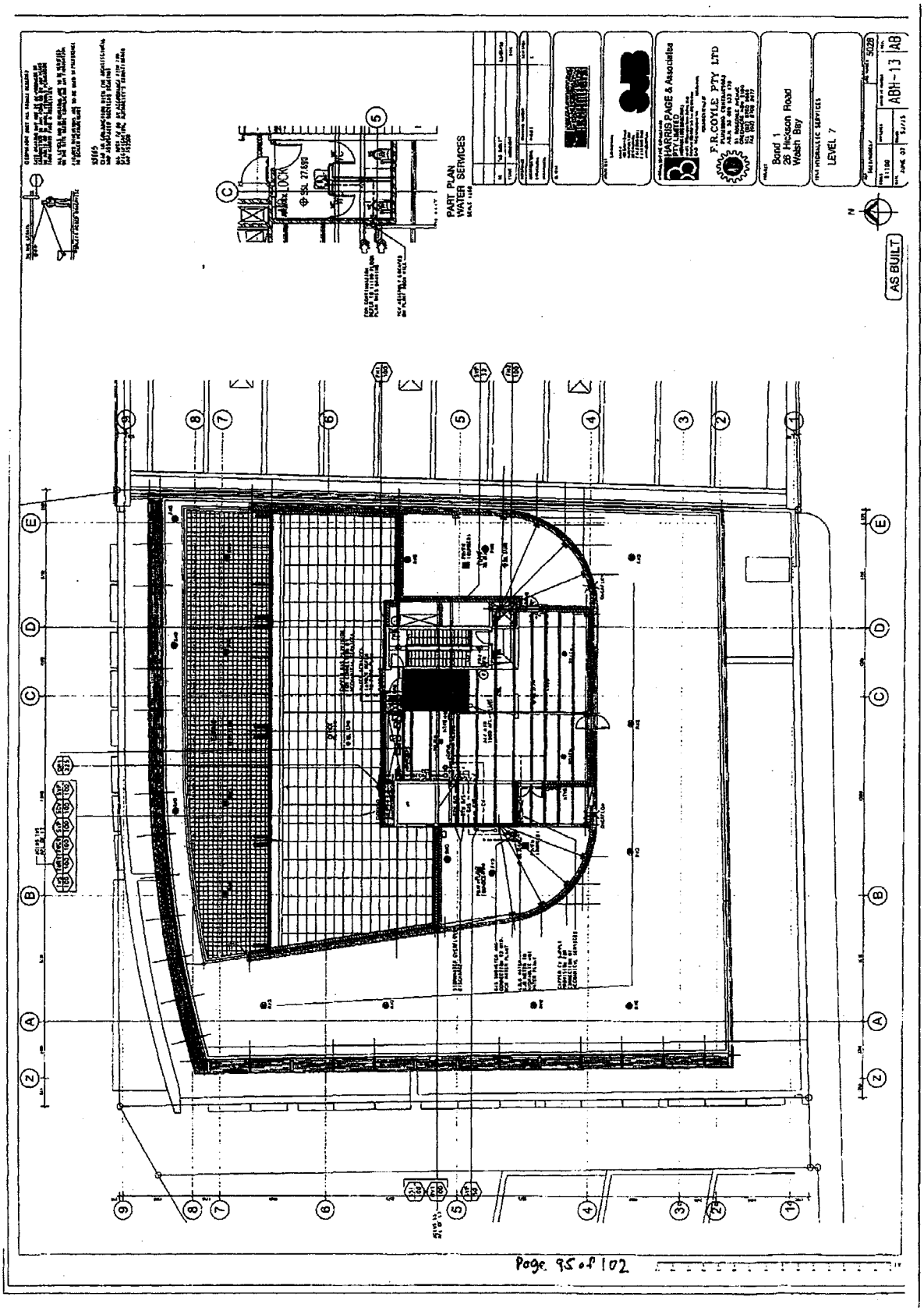
PART PLAN
WATER SERVICES
HARRIS PAGE & Associates
F.R.COYLE PTY LTD
Bond 1
28 Hickson Road
Walsh Bay
LEVEL 7
AS BUILT
ABH-13
AB
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B. A. Fitzpatrick

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# Annexure E – Base Building Plans

Sublease

**Lease of Levels 4 and 7, Bond One, 20 Windmill Street, Walsh Bay NSW**



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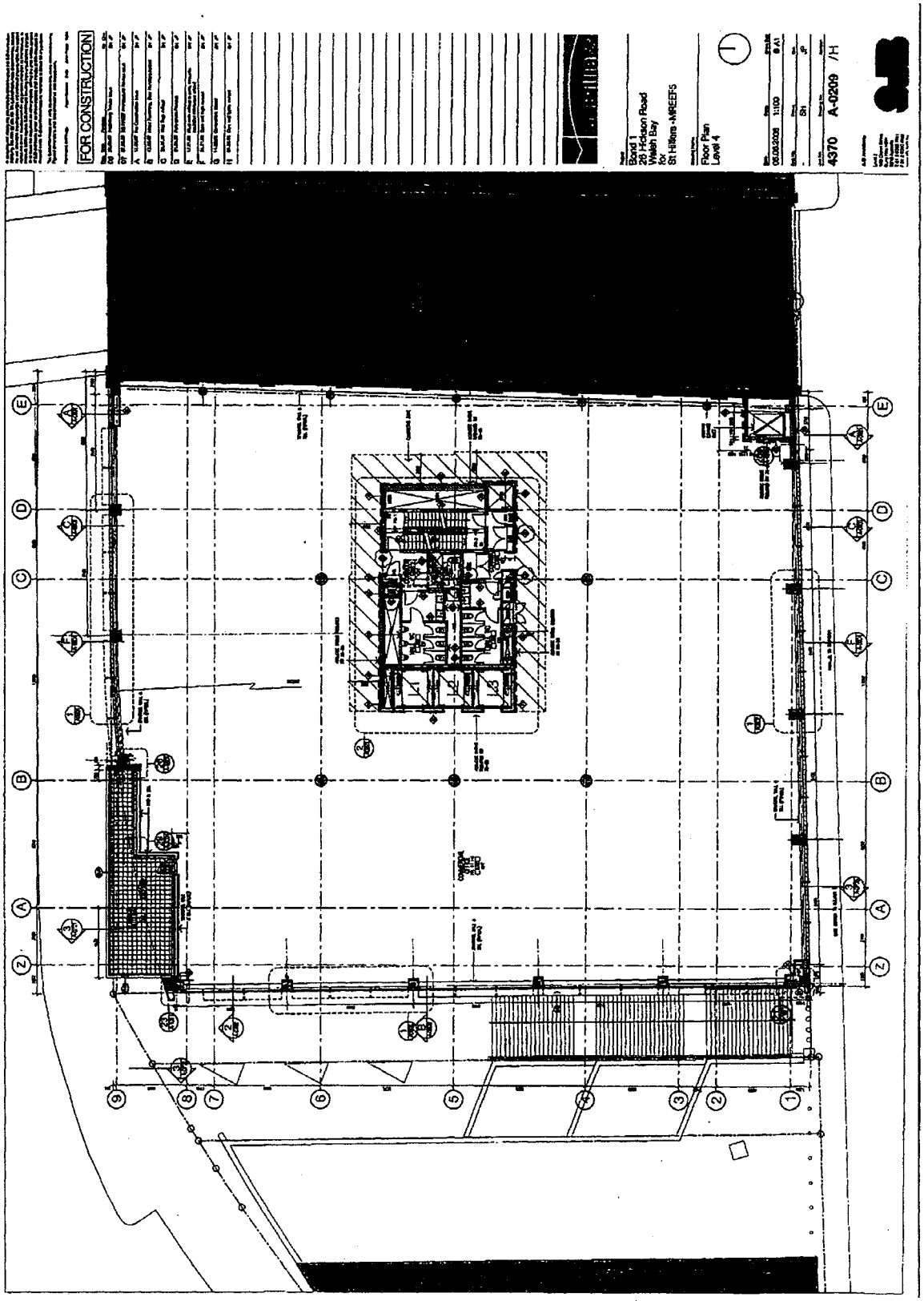
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for
St Hilliers - MREEF5
Floor Plan
Level 4
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A-0209
/H



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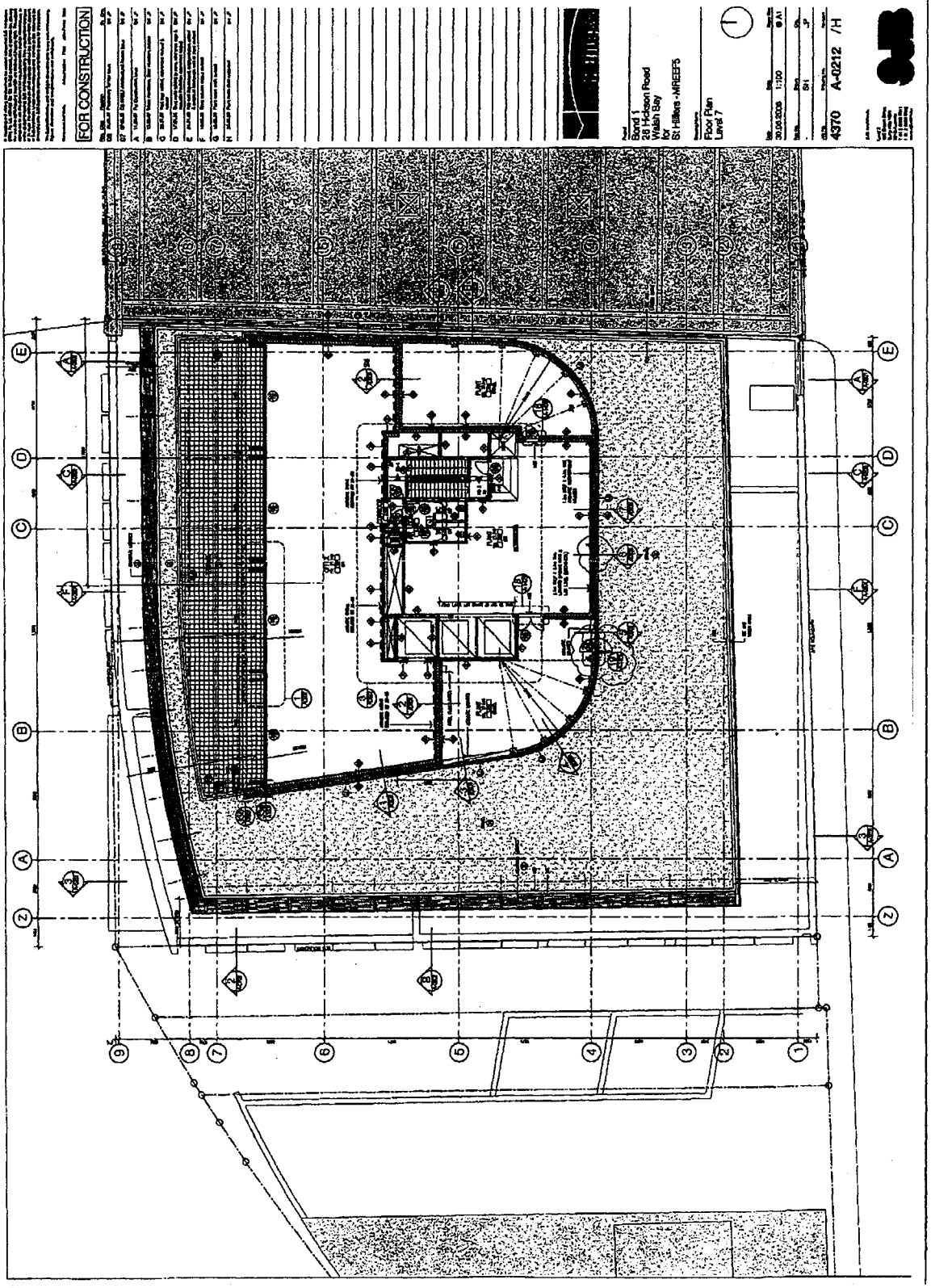
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St Hilliers +MREIF5
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Level 7
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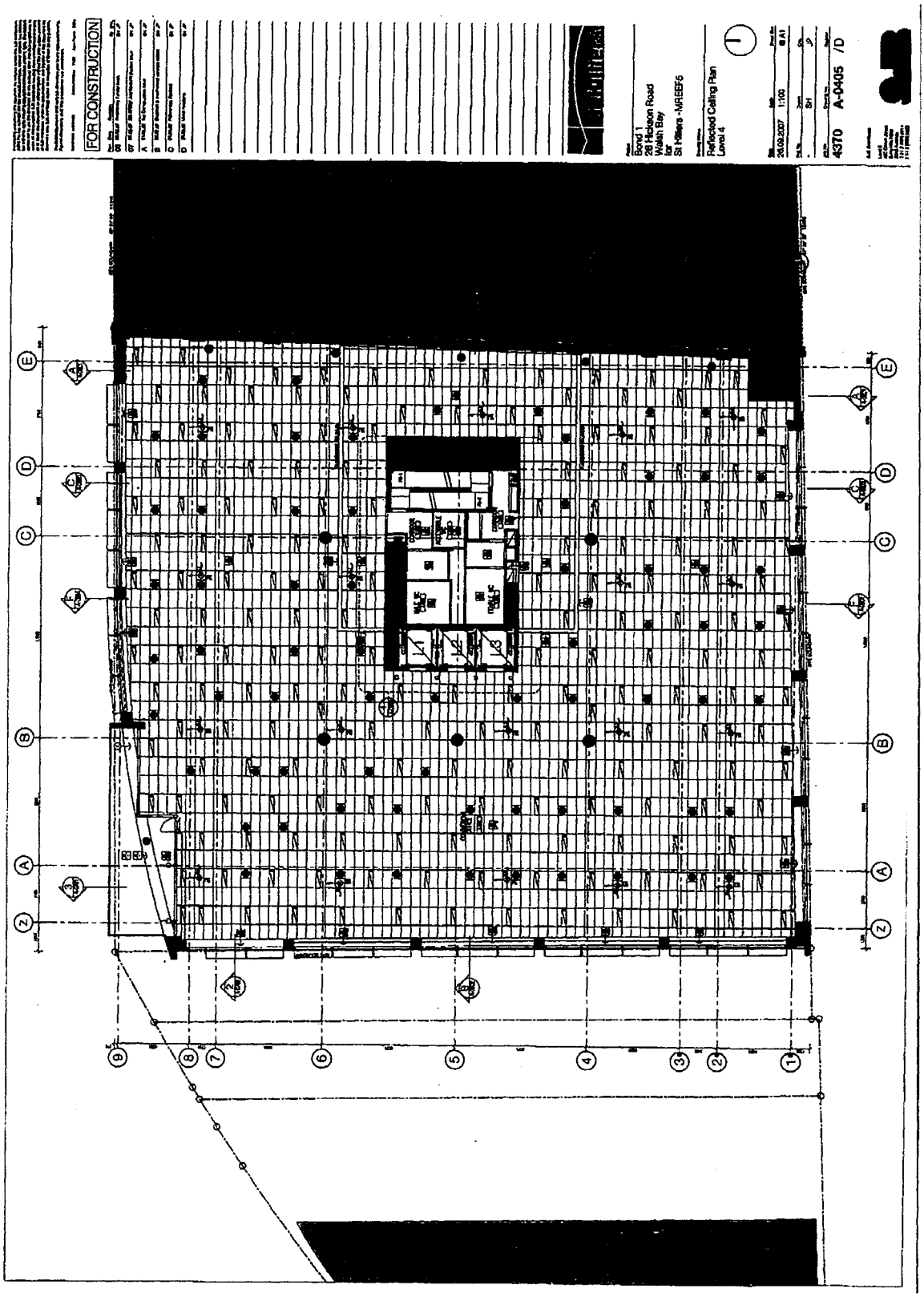
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Reflected Ceiling Plan
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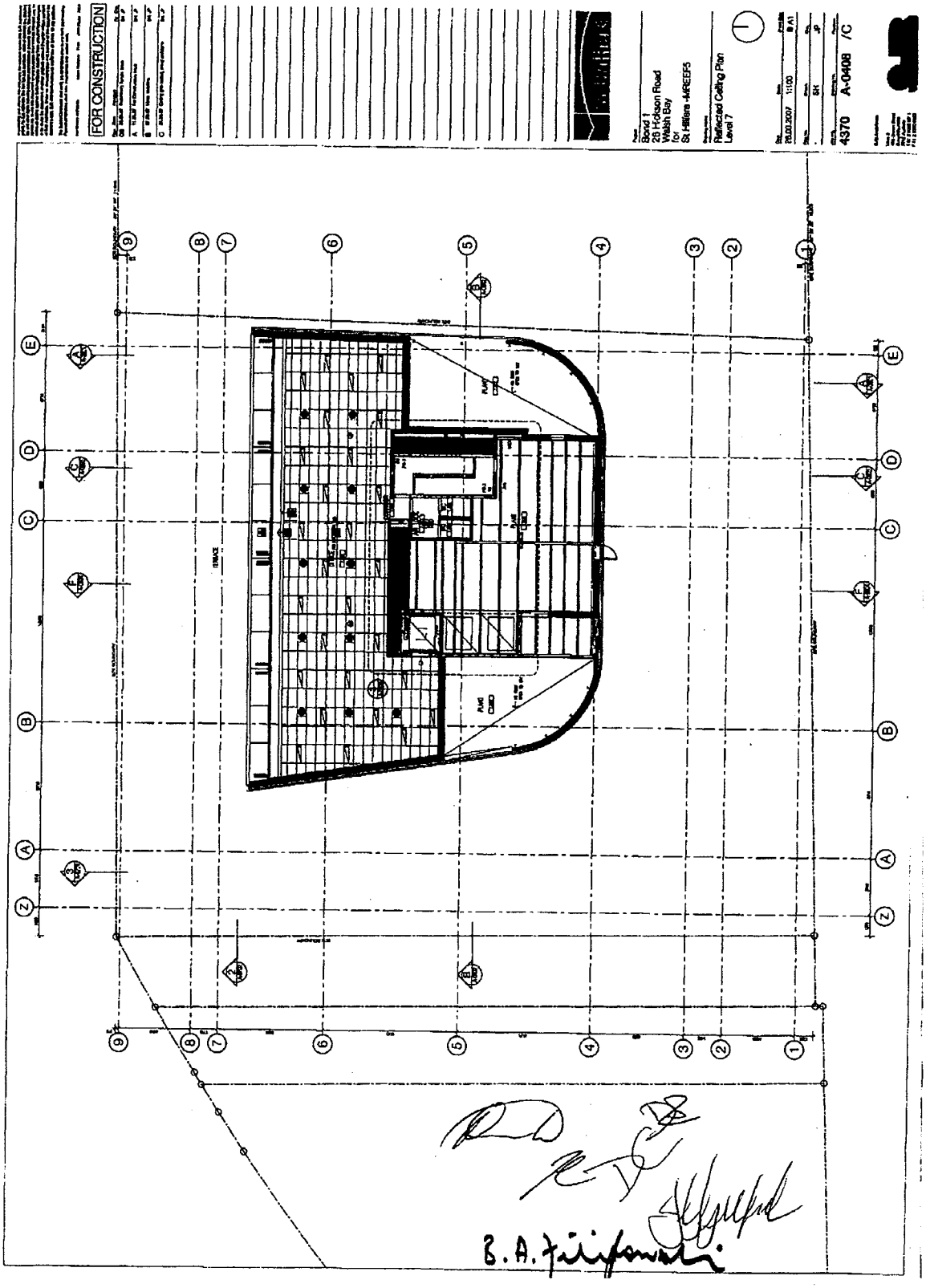
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