



Form 59  
Rule 29.02(1)

## Affidavit

No. NSD 616 of 2021

Federal Court of Australia  
District Registry: New South Wales  
Division: General

**Westpac Banking Corporation ABN 33 007 457 141**

Applicant

**Forum Finance Pty Limited ACN 153 301 172 and others named in the Schedule**

Respondents

Affidavit of: Paul Francis Giugni  
Address: 85 Castlereagh Street, Sydney, NSW  
Occupation: General Counsel  
Date: 8 July 2021

### Contents

Document number	Details	Paragraph	Page
1	Affidavit of Paul Giugni dated on 8 July 2021	1-11	1-5
2	Annexure A – Payment Schedule dated 2 October 2018		6
3	Annexure B – Certificate of Acceptance Delivery dated 5 October 2018		10
4	Annexure C - Transfer of Rights and Title to the Payments and Goods dated 12 October 2018		11

Filed on behalf of (name & role of party) Westpac Banking Corporation, applicant  
 Prepared by (name of person/lawyer) Caitlin Murray  
 Law firm (if applicable) MinterEllison  
 Tel (02) 9921 8888 Fax 02 9921 8123  
 Email caitlin.murray@minterellison.com  
**Address for service** Governor Macquarie Tower, 1 Farrer Place, SYDNEY NSW 2000  
 (include state and postcode) Our reference: CMM:AGS:1353397

Version 3 form approved 02/05/2019

Document number	Details	Paragraph	Page
5	Annexure D – Email chain between Mr Giugli and Mr Miles dated 8 July 2021		12

I, Paul Giugni, of 85 Castlereagh Street, Sydney, General Counsel, say on oath:

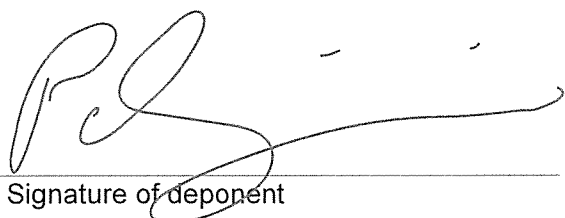
1. I am the General Counsel for Scentre Group Limited ABN 66 001 671 496 (**Scentre**) and its subsidiaries. I am authorised to make this affidavit on behalf of Scentre.
2. Except where otherwise indicated, I make this affidavit from my own knowledge or from information that I have obtained from the books and records of Scentre.
3. Scentre Group owns and operates a portfolio of retail real-estate assets in Australia and New Zealand, including 42 Westfield shopping centres.
4. Scentre has a number of subsidiaries within its group structure, one of which is Scentre Shopping Centre Management Pty Limited (**Scentre SCM**).
5. Annexed to this affidavit and marked 'A' to 'C' respectively are copies of the following three documents that I have been provided with by Caitlin Murray from MinterEllison on 8 July 2021:
  - (a) a document titled "Payment Schedule" between Scentre SCM (as customer) and Forum Finance (as supplier) which is dated 2 October (**Payment Schedule**);
  - (b) a document titled "Certificate of Acceptance of Delivery" dated 5 October 2018 (**Certificate of Acceptance of Delivery**); and
  - (c) a document titled 'Transfer of Rights and Title to the Payments and Goods' dated 12 October 2018 (**Transfer of Rights and Title to the Payments and Goods**).
6. Each of the documents at Annexures A and B purport to have been signed by Greg Miles on behalf of Scentre SCM.
7. Mr Miles' signature on the document at Annexure B purports have been witnessed by a "Michael Rapley", who is said to by a Facility Manager.

Signed: .....


Taken by: .....

- 8. I have caused an initial search to be conducted over the systems which are maintained by Scentre, which include the systems maintained by Scentre SCM. In this regard, I am able to say that we have not been able to locate any of the documents at Annexures A and B within our systems.
- 9. Further, I have caused a search to be conducted of the employment records held by Scentre Limited and can confirm that a person called Michael Rapley was previously employed by Scentre Limited (another subsidiary of Scentre) in a role as a Facility Manager, but that Mr Rapley ceased to be employed with Scentre Limited on 10 February 2017, approximately 18 months before the document at Annexure B was purported to have been witnessed by him.
- 10. Mr Miles is no longer in the role of Chief Operating Officer of Scentre.
- 11. On 8 July 2021, I caused a copy of the documents sent to me by Ms Murray to be sent to Mr Miles to ascertain whether the signature on those documents purporting to be his was in fact his. Annexed and marked 'D' is a copy of my email exchange with Mr Miles, in which he confirmed that the signatures on the documents at Annexure A and Annexure B were not his.

sworn by the deponent  
 at Croydon  
 in New South Wales  
 on 8 July 2021

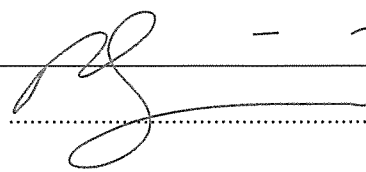
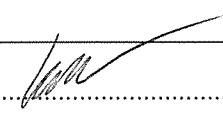
)  
 )  
 )  
 )  
 )  
 )   
 Signature of deponent

Before me:

  
 \_\_\_\_\_  
 Signature of witness

Kate Cockburn

Solicitor

Signed:  Taken by: 

And as a witness, I certify the following matters concerning the person who made this affidavit (**deponent**):

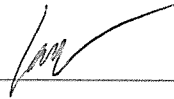
1. This affidavit is witnessed over audio visual link in accordance with Part 2B of the *Electronic Transactions Act 2000* (NSW).
2. I saw the face of the deponent.
3. I observed the deponent signing a copy of this affidavit in real time.
4. I attest or otherwise confirm witnessing the deponent's signature by signing this affidavit.
5. I am reasonably satisfied this affidavit signed by me is a copy of the affidavit signed by the deponent.
6. I have confirmed the deponent's identity using the following identification document:

Confidential

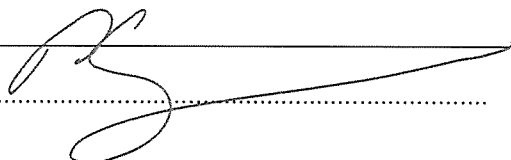
Confidential

Identification document relied on (may be original or certified copy)

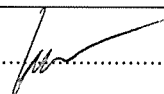
Signature of witness:



Signed: .....



Taken by: .....



**Schedule of Parties**

No. NSD 616 of 2021

Federal Court of Australia  
District Registry: New South Wales  
Division: General

**Applicants**

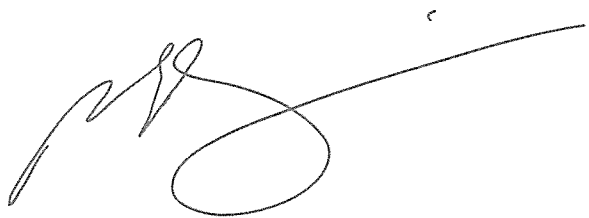
Applicant **Westpac Banking Corporation ABN 33 007 457 141**

**Respondents**

First Respondent **Forum Finance Pty Limited ACN 153 301 172**

Second Respondent: **Basile Papadimitriou**

Third Respondent: **Vincenzo Tesoriero**



This page and the following 3 pages comprise(s) the annexure marked "A" referred to in the affidavit of Paul Francis Grinyri sworn/affirmed before me on 8 July 2021

6

A

*Kate Cahburn*  
 Solicitor  
 An Australian Legal Practitioner within the meaning of the Legal Profession Uniform Law (NSW)  
**forum**  
 Your business. Just better.

THIS PAYMENT SCHEDULE IS A TAX INVOICE

# Payment Schedule

Forum Finance Pty Ltd. ABN 16 153 301 172 of Level 5, 141 Walker Street, North Sydney NSW 2060 (the "owner") enters into this Agreement with:

### Customer Details

Reference No. \_\_\_\_\_

Customer Name SCENTRE SHOPPING CENTRE MANAGEMENT PTY LTD

Trading Name \_\_\_\_\_ ABN 55 000 712 710

Address 85 CASTLEREAGH STREET, SYDNEY Postcode 2001

This is a Payment Schedule dated 2nd OCTOBER ("Schedule") by and between Forum Finance Pty Ltd. (**Supplier**) and SCENTRE SHOPPING CENTRE MANAGEMENT PTY LTD (**Customer**).

In the event of a conflict between the terms of this Schedule and the terms of any software license, product warranty or service agreement between the product vendor(s) shown in Table A (**Product Vendor(s)**) and Customer (**Licence Agreement**), applicable to the Products in this Schedule, the terms of this Schedule shall take priority and prevail. This Schedule, once accepted by the Supplier returning an executed copy of the Schedule, constitutes a binding contract subject to the terms and conditions in Annexure A.

### Product Description (Table A)

The items described below are the software and/or hardware products the subject of this Schedule (**Products**):

#### Software

Software Vendor	Software Description
N/A	

#### Hardware

Hardware Vendor	Hardware Description
REFER TO ANNEXURE (A)	

### Product Price and Payment Terms (Table B)

Date	Installment Amount	GST	Amount Inc GST
15th OCTOBER	\$60,900.00	\$6,090.00	\$66,990.00
<i>59</i> SUBSEQUENT PAYMENTS	<i>\$60,900.00</i>	<i>\$6,090.00</i>	<i>\$66,990.00</i>
		<b>Product Price</b>	\$4,019,400.00

THIS PAYMENT SCHEDULE IS A TAX INVOICE

# Payment Schedule

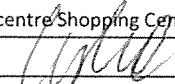

## Product Price and Payment Terms, Cont...

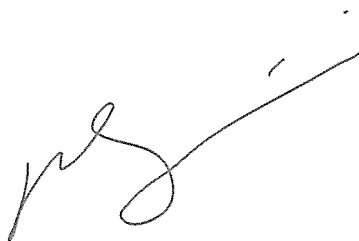
**On acceptance of delivery of the Products by Customer the Customer irrevocably acknowledges and agrees that:**

- The Product Price shown in Table B is incurred on acceptance of delivery of the Products by Customer and Customer irrevocably commits to paying the Product Price in all circumstances and that its obligation to pay the Product Price is absolute and unconditional from the date of acceptance of delivery of the Products.
- Subject to the provisions in **Annexure A**, the Product Price is payable by installments in the amounts (**Installment Amount**) and on the due dates set out in **Table B** above.

Customer hereby agrees to all terms and conditions of this Schedule (including the terms and conditions attached hereto as Annexure A).

IN WITNESS WHEREOF, the parties hereto have caused this Purchase Schedule to be duly executed by their authorized representatives.

Customer	<u>Scentre Shopping Centre Management Pty Ltd</u>	Supplier	<u>Forum Finance Pty Ltd</u>
By	<u></u>	By	<u></u>
Print Name	<u>GREG MILES</u>	Name	<u>TAS PAPAS</u>
Title	<u>COO</u>	Title	<u>ORCA Sales Director</u>



THIS PAYMENT SCHEDULE IS A TAX INVOICE

## Annexure A

## Payment Schedule

- 1 Product Price**  
(a) The Product Price shall be due and payable as shown in Table B of this Schedule and (b) Customer shall pay the Product Price in the instalments and on the due dates set out in Table B of this Schedule in full in cleared funds without any abatement, set-off, withholding, defense or counterclaim for any reason whatsoever (including, but not limited to, a force majeure event). The Supplier will issue a separate tax invoice to the Customer for payment of any instalment before its due date but any failure by the Supplier to issue the separate tax invoice does not affect the Customer's obligation to pay the instalments on the due dates as set out in Table B.
- 2 Assignment**  
CUSTOMER MAY NOT ASSIGN, NOVATE OR GRANT AN ENCUMBRANCE THIS SCHEDULE OR THE RIGHTS AND/OR OBLIGATIONS HEREUNDER, NOR SHALL THE CUSTOMER ENCUMBER, LEASE OR LEND THE PRODUCTS OR SUBMIT THEM TO BE USED BY ANYONE OTHER THAN CUSTOMER'S EMPLOYEES OR AGENTS WITHOUT THE PRIOR WRITTEN CONSENT OF THE SUPPLIER. The Customer agrees that the Supplier may, without notice to or consent of the Customer, assign to the benefit of a third party ("Assignee") its rights, title and interest, in whole and in part, to receive the Product Price and any other amounts payable by the Customer pursuant to the Schedule ("Assigned Payments"). The Assignee shall not be liable for or be required to perform any of the Supplier's or Product Vendor's obligations to Customer under or in connection with this Schedule, the Products or any Licence Agreement, such obligations being retained by Supplier and/or Product Vendor (as the case may be) each in their own capacity. For the avoidance of doubt, service credits, rebates or price reductions, if applicable, shall be independent of the Customer's obligation to pay the Product Price and shall not have the effect of reducing the Product Price payable. Customer's obligation to pay the Product Price and liability therefore is absolute and unconditional, and is separate and completely independent of the delivery, performance or quality of the Products and of any Licence Agreement the Customer may have with the Product Vendor or any other person and without limiting the foregoing, the Customer's obligation to pay the Product Price shall continue notwithstanding (and shall not be affected by, released and/or reduced as a result of) any of the following (each a "Relevant Event"): (a) any breach under or in connection with this Schedule, the Products or any Licence Agreement and/or any wrongful or negligent act or omission by or on behalf of the Supplier and/or the Product Vendor; (b) any dispute between the Product Vendor and/or the Supplier and the Customer; (c) any change or revision to this Schedule; (d) any termination or suspension of this Schedule in whole or in part for any reason whatsoever; (e) any accident or damage to and/or loss of any Product (or any function thereof) or the Customer being unable to use any Product, in each case for any reason whatsoever; and/or (f) any Event of Default. None of the foregoing shall affect any right the Customer may have to bring a claim in damages against the Supplier or the Product Vendors directly.
- 3 Events of Default**  
The term "Event of Default" shall mean any one or more of the following: (a) Customer shall fail to pay any Product Price when due and such failure is not cured within 10 days; (b) Customer shall fail to perform any other covenant or agreement hereunder and such failure is not cured, if capable of being remedied, within 15 days after written notice from the Supplier; (c) Customer or any guarantor of Customer's obligations (each a "Guarantor") commence any action for relief under any laws relating to bankruptcy, insolvency, reorganization or relief of debtors or is otherwise unable to pay its debts as and when they fall due; (d) Customer shall enter into a merger or other transaction in which it is not the surviving entity, sell or transfer all or substantially all of its assets, or take any step to dissolve itself or be terminated; (e) there is a change in the ownership or control of the Customer, funding arrangements, business management or financial condition of the Customer that would have a material adverse effect on the Customer's ability or willingness to perform its obligations under this Schedule; or (f) any representation or warranty made by Customer to the Supplier in connection with this Schedule shall prove at any time to have been untrue or misleading in any material respect.
- 4 Remedies**  
Upon the occurrence of any Event of Default, in whole or in part and for whatever reason, the Supplier (or Assignee, if applicable) may by notice to the Customer exercise any one or more of the following remedies: (a) declare all Product Price (or Assigned Payments, if applicable) due and unpaid on the date of Event of Default and all Product Price which would have fallen due on or after the date of Event of Default pursuant to Table A of this Schedule, accrued interest, late charges, taxes, and other amounts due under or in connection with this Schedule, to be immediately due and payable; (b) charge Customer interest on all Product Price (or Assigned Payments, if applicable) due to the Supplier (or Assignee, if applicable) at the rate of 1.5% per month or the maximum rate permitted by law, whichever is less, from the date of the Event of Default until paid in full (before and after judgment); (c) require Customer to cease use of all Product, delete all Software from Customer's computer systems and deliver all Hardware (and all documentation) to the Supplier at Customer's expense; (d) require payment of any costs incurred by the Supplier (or Assignee, if applicable) in terminating or replacing any funding arrangements entered into in connection with the provision of the Product (or provision of funds by the Assignee in connection with the assignment of rights contemplated hereunder, if applicable); and/or (e) require payment of any taxes applicable to any of the foregoing amounts (together "Termination Payment"). The Customer agrees that the Termination Payment is fair and reasonable, and is not a penalty.
- 5 Termination**  
This Schedule shall terminate on receipt of all monies due from the Customer unless terminated earlier in accordance with this clause 5. Subject to this clause, neither party shall be entitled to terminate this Schedule prior to that date. Notwithstanding the foregoing, the Supplier (or Assignee, if applicable) may terminate this Schedule by notice to the Customer at any time after the occurrence of an Event of Default. Termination shall be without prejudice to the accrued rights and remedies of either party. In particular, the Customer's obligations set out in clauses 1, 2, 4, 6 and 7 of this Schedule shall survive any such termination of this agreement.
- 6 Indemnities**  
The Customer unconditionally and irrevocably indemnifies the Supplier against liability, loss and reasonable costs, charges or expenses incurred in connection with: (a) an Event of Default; (b) any new legislation or change in any legislation or regulation, or any change in any ruling, guideline, directive or requirement issued by a governmental authority or body or any change in the interpretation of any such legislation or regulation, ruling, guideline, directive or requirement that affects this Schedule, the transactions under it, the Supplier's obligations under this Schedule or the Supplier's return under this Schedule; (c) the early termination of this Schedule; (d) any security interest provided under this Schedule not having its intended priority, failing to attach to the Product (if applicable), not being perfected, being void, illegal, invalid, unenforceable or of limited force and effect; (e) any claim or demand made by any third party in relation to the Product, including without limitation any claim for the infringement of a patent, trademark, copyright or other intellectual property right; (f) any steps taken by Supplier or the Assignee to administer, exercise, enforce or preserve any of its rights under this Schedule.
- 7 Ownership**  
Ownership of Product which is Hardware remains with the Supplier until all amounts due from the Customer under this Schedule are received by the Supplier in clear funds.
- 8 Risk of Loss, Insurance**  
Customer shall take out third-party insurance with a reputable insurer approved by the Supplier and accept responsibility for any loss or damage to the Hardware while in its possession.
- 9 Covenants**  
Customer represents, warrants and covenants to the Supplier as of the date hereof, that: (a) Customer (and each Guarantor, if any): (i) is duly organized and validly existing under the laws of the state of its organization; (ii) has adequate power and capacity to enter into this Schedule and any other documents required to be delivered in connection herewith (hereinafter "Documents"); and (iii) holds each authorization and consent necessary for it to conduct its business as it is now being conducted; (b) the Documents have been duly authorized, executed and delivered by Customer and each Guarantor and constitute valid, legal and binding agreements, enforceable in accordance with their terms; (c) Customer's payment obligations under this Schedule rank at least equally with all of its other unsecured and unsubordinated payment obligations, other than obligations that are mandatorily preferred by law; (d) Customer has disclosed to the Supplier all the information that is material to an assessment by the Supplier of the risks that it assumes by entering into this Schedule and the transactions under it; (e) Customer has not asserted against the Supplier, and has no basis to assert: (i) any set-offs, counterclaims or defences to Customer's obligation under this Schedule; or (ii) any claims in connection with the Products; (f) Customer has not received or been promised any credits, rebates, refunds or other compensation, in cash or in kind, with respect to the purchase of the Products, except as disclosed to the Supplier; and (g) Customer shall keep the Products free of all liens and encumbrances, except for the rights of Product Vendor and any Assignee.
- 10 PPSA**  
As security for Customer's obligations under this Schedule, Customer grants to Supplier a security interest in the Products. The Supplier may, at the Supplier's expense, apply for any registration, or give any notification, in connection with any security interest for the purposes of the PPSA, and for whatever class of collateral Supplier thinks fit. The Customer consents to any registration or notification by the Supplier and agrees not to make an amendment demand. The Supplier need not give any notice under the PPSA (including a notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded. The Supplier need not give any notice under the PPSA (including a notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded. The Customer agrees that the Supplier need not comply with sections 95, 118, 121(4), 125, 130, 132(3) (d) and 132(4) of the PPSA, or any other provision of the PPSA notified to the Customer by Supplier after the date of this Schedule, and the Customer may not exercise any rights under sections 142 and 143 of the PPSA, to the extent that the law permits these provisions, rights and requirements to be excluded. Whenever the Supplier or the Assignee reasonably requests Customer to do anything: (a) to ensure that this Schedule or any security interest is fully effective, enforceable and perfected with the contemplated priority; (b) for more satisfactorily assuring or securing to the Supplier or the Assignee the property the subject of any such security interest in a manner consistent with this Schedule; or (c) for aiding the exercise of any power in this Schedule, the Customer shall do it promptly at its own cost. For the purposes of this clause, PPSA means the *Personal Property Securities Act 2009* (Cwlth).
- 11 Choice of Law**  
This Schedule and any non-contractual obligations arising out of or in connection with it are governed by the laws of New South Wales, Australia. Each party irrevocably and unconditionally submits to the non-exclusive jurisdictions of the Courts of New South Wales and Courts of Appeal from them.
- 12 Waivers**  
Customer shall not be discharged from its obligations hereunder except by payment and performance in full of all such obligations.
- 13 Entire Agreement**  
This Schedule contains the entire agreement between Customer and the Supplier relating to the subject matter hereof. No agreements or understandings shall be binding on the parties hereto unless set forth in writing and signed by the parties. Time is of the essence in this Schedule. Any wording of this Schedule held unenforceable in any jurisdiction shall be deemed deleted to the extent of such unenforceability without invalidating the remaining wording and/or provisions of this Schedule.

Want to know more?

n. 1300 036 786

e. info@forumgroup.com.au





People & Technology. Together.

# Annexure (A)

Agreement To: \_\_\_\_\_ Agreement No. \_\_\_\_\_

### Equipment

Product Description	Serial No.	Location Address
ORCA OG100	OG100 3745EK	Bondi Junction Sydney NSW
ORCA OG100	OG100 3804EK	Bondi Junction Sydney NSW
ORCA OG100	OG100 3863EK	Bondi Junction Sydney NSW
ORCA OG100	OG100 3922EK	Pitt Street Mall Sydney NSW
ORCA OG100	OG100 3981EK	Pitt Street Mall Sydney NSW
ORCA OG100	OG100 4040EK	Pitt Street Mall Sydney NSW
ORCA OG100	OG100 4099EK	Burwood NSW
ORCA OG100	OG100 4158EK	East Gardens NSW
ORCA OG100	OG100 4217EK	Parramatta NSW
ORCA OG100	OG100 4276EK	Parramatta NSW
ORCA OG100	OG100 4335EK	Parramatta NSW
ORCA OG100	OG100 4394EK	Miranda NSW
ORCA OG100	OG100 4453EK	Miranda NSW
ORCA OG100	OG100 4512EK	Liverpool NSW
ORCA OG100	OG100 4571EK	Liverpool NSW
ORCA OG100	OG100 4630EK	Hornsby NSW
ORCA OG100	OG100 4689EK	Mount Druitt NSW
ORCA OG100	OG100 4748EK	Tuggerah NSW
ORCA OG100	OG100 4807EK	Tuggerah NSW
ORCA OG100	OG100 4866EK	Chatswood NSW
ORCA OG100	OG100 4925EK	Chatswood NSW
ORCA OG100	OG100 4984EK	Warringah Mall NSW
ORCA OG100	OG100 5043EK	Warringah Mall NSW
ORCA OG100	OG100 5102EK	Penrith NSW
ORCA OG100	OG100 5161EK	Penrith NSW

### Customer's Signature

Signed for and on behalf of: Scentre Shopping Centre Management Pty Ltd

ABN: 55 000 712 710

Signature: \_\_\_\_\_

Two handwritten signatures are present. One is a cursive signature in black ink, and the other is a more stylized signature in blue ink.

10

B

This page and the following ~~\_\_\_\_\_~~ pages comprise(s) the annexure marked " B " referred to in the affidavit of... Paul Francis Giugni... sworn/affirmed before me on 8 July 2018

Solicitor

An Australian Legal Practitioner within the meaning of the Legal Practice Act 2014 (NSW)

# forum

Your business. Just better.

*Kate Coughlin*  
**Certificate of Acceptance of Delivery**

Forum Finance Pty Ltd. ABN 16 153 301 172 of Level 5, 141 Walker Street, North Sydney NSW 2060 (the "owner") enters into this Agreement with:

## Supplier Details

Customer Name FORUM FINANCE PTY LTD  
 Trading Name \_\_\_\_\_ ABN 16 153 301 172  
 Address LVL 5, 141 WALKER ST, NORTH SYDNEY Postcode 2060

## Customer Details

Customer Name SCENTRE SHOPPING CENTRE MANAGEMENT PTY LTD Pty Limited \_\_\_\_\_  
 Trading Name \_\_\_\_\_ ABN 55 000 712 710  
 Address 85 CASTLEREAGH STREET, SYDNEY Postcode 2001

## Payment Schedule

Payment Schedule dated on between Supplier and Customer.

## Date of Acceptance of Delivery

Date 5th OCTOBER 2018

## Products

As described in the Payment Schedule.

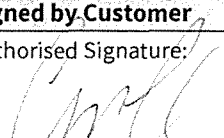

## Product price

As described in Table B in the Payment Schedule.

On the date of executing this Certificate, the Customer hereby acknowledges, agrees and declares that:

1. All Products the subject of the above Payment Schedule have been received and accepted by the Customer on the above date of acceptance of delivery for the purpose of the Payment Schedule, and complies with its description in the Payment Schedule, are in good working order and condition, are of merchantable quality and are fit for their purpose;
2. The Customer has read and fully understands the Payment Schedule (including, without limitation, the terms and conditions attached in Annexure A thereto);
3. The Product Price shown in Table B of the Payment Schedule is incurred on the above date of acceptance of delivery by Customer and Customer irrevocably commits to paying the Product Price in all circumstances and that its obligation to pay the Product Price is absolute and unconditional from the above date of acceptance of delivery of the Products; and
4. Subject to the provisions in Annexure A of the Payment Schedule, the Product Price is payable by installments in the amounts (Installment Amount) and on the due dates set out in Table B in the Payment Schedule.

Date \_\_\_\_\_

Signed by Customer	
Authorised Signature: 	Name (print): GREG MILES
	Title: COO
In the presence of: Signature of witness: 	Name (print): MICHAEL RAPLEY
	Title: Facility Manager

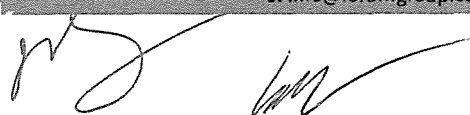
1 of 1

BDOAOD.Version1.Aug.2018

Want to know more?

p. 1300 036 786

e. info@forumgroup.com.au



This page and the following 1 pages comprise(s)  
the annexure marked " C " referred to in  
the affidavit of Paul Gignani  
sworn/affirmed before me on

11

C

  
 ..... Kate Cochburn .....  
 Solicitor

An Australian Legal Practitioner within the meaning  
of the Legal Profession Uniform Law (NSW)

# forum

Your business. Just better.

12 October 2018

Greg Miles – C00  
Scentre Shopping Centre Management Pty Ltd  
ABN 55 000 712 710.  
85 Castlereagh Street,  
Sydney, NSW, 2001.

## TRANSFER OF RIGHTS AND TITLE TO THE PAYMENTS AND GOODS

Dear Greg,

Referring to your Payment Schedule dated 2 October 2018 entered into thereunder between Scentre Shopping Centre Management Pty Ltd and Forum Finance Pty Limited, we hereby give you notice, that we have unconditionally and absolutely transferred full legal and beneficial title to and right and interest in the Payment Schedule, including the payments and goods specified below ("**Purchased Assets**") to a third party financier, BHD Leasing Pty Limited ACN 154 478 707 (who is acting as agent for Westpac Institutional Bank) ("**BHD**"):

### Payments

As shown in Table A to the Payment Schedule

### Goods

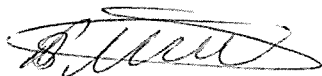
As per Annexure A of the Payment Schedule

You are hereby directed to make all payments due or to become due from you under the Payment Schedule to the following account until further notice from BHD:

Bank : Westpac Bank  
Branch : 032 298  
A/C No : 403 174  
A/C Name: BHD Leasing Pty Limited

For further information, please contact me or Luke Price at BHO Finance (02 9966 4077).

Yours faithfully,



Bill Papas  
For and behalf of  
**Forum Finance Pty Limited:**  
Level 5, 141 Walker Street  
North Sydney. NSW 2060



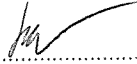
...  
...  
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12

D

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...

This page and the following 7 pages comprise(s)  
the annexure marked " D " referred to in  
the affidavit of... Paul Giugni .....  
sworn/affirmed before me on 8 July 2021

  
Kate Colburn  
Solicitor  
An Australian Legal Practitioner within the meaning  
of the Legal Profession Uniform Law (NSW)

**From:** Greg Miles < >  
**Sent:** Thursday, 8 July 2021 5:23 PM  
**To:** Paul Giugni <PGiugni@Scentregroup.com>  
**Subject:** Re: Scentre - Westpac/Forum Finance


Paul , I didn't sign it and signature  
Not even close

Greg Miles  
Managing Director

On Jul 8, 2021, at 5:15 PM, Paul Giugni <[PGiugni@scentregroup.com](mailto:PGiugni@scentregroup.com)> wrote:

Hi Greg

Please see attached contract and schedules that were supposedly sign by you.



Is that your signature?

Regards

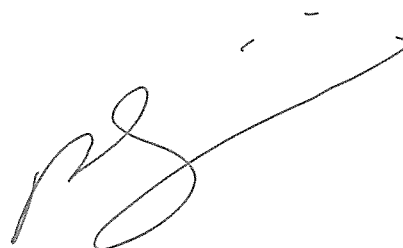
Paul

**Paul Giugni**  
General Counsel

<image001.gif>

T +61293587730  
M +61419417272  
E [PGiugni@Scentregroup.com](mailto:PGiugni@Scentregroup.com)  
W [scentregroup.com](http://scentregroup.com)

<Exhibit to Scentre affidavit.PDF>





Your business. Just better.

THIS PAYMENT SCHEDULE IS A TAX INVOICE

### Payment Schedule

Forum Finance Pty Ltd. ABN 16 153 301 172 of Level 5, 141 Walker Street, North Sydney NSW 2060 (the "owner") enters into this Agreement with:

**Customer Details**

Reference No. \_\_\_\_\_

Customer Name SCENTRE SHOPPING CENTRE MANAGEMENT PTY LTD

Trading Name \_\_\_\_\_ ABN 55 000 712 710

Address 85 CASTLEREAGH STREET, SYDNEY Postcode 2001

This is a Payment Schedule dated 2nd OCTOBER ("Schedule") by and between Forum Finance Pty Ltd. (**Supplier**) and SCENTRE SHOPPING CENTRE MANAGEMENT PTY LTD (**Customer**).

In the event of a conflict between the terms of this Schedule and the terms of any software license, product warranty or service agreement between the product vendor(s) shown in Table A (**Product Vendor(s)**) and Customer (**Licence Agreement**), applicable to the Products in this Schedule, the terms of this Schedule shall take priority and prevail. This Schedule, once accepted by the Supplier returning an executed copy of the Schedule, constitutes a binding contract subject to the terms and conditions in Annexure A.

**Product Description** (Table A)

The items described below are the software and/or hardware products the subject of this Schedule (**Products**):

**Software**

Software Vendor	Software Description
N/A	

**Hardware**

Hardware Vendor	Hardware Description
REFER TO ANNEXURE (A)	

**Product Price and Payment Terms** (Table B)

Date	Installment Amount	GST	Amount Inc GST
15th OCTOBER	\$60,900.00	\$6,090.00	\$66,990.00
59 SUBSEQUENT PAYMENTS	\$60,900.00	\$6,090.00	\$66,990.00
		<b>Product Price</b>	\$4,019,400.00

THIS PAYMENT SCHEDULE IS A TAX INVOICE

# Payment Schedule

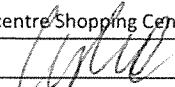
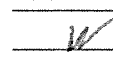
## Product Price and Payment Terms, Cont...

**On acceptance of delivery of the Products by Customer the Customer irrevocably acknowledges and agrees that:**

- The Product Price shown in Table B is incurred on acceptance of delivery of the Products by Customer and Customer irrevocably commits to paying the Product Price in all circumstances and that its obligation to pay the Product Price is absolute and unconditional from the date of acceptance of delivery of the Products.
- Subject to the provisions in **Annexure A**, the Product Price is payable by installments in the amounts (**Installment Amount**) and on the due dates set out in **Table B** above.

Customer hereby agrees to all terms and conditions of this Schedule (including the terms and conditions attached hereto as Annexure A).

IN WITNESS WHEREOF, the parties hereto have caused this Purchase Schedule to be duly executed by their authorized representatives.

Customer	Scentre Shopping Centre Management Pty Ltd	Supplier	Forum Finance Pty Ltd
By		By	
Print Name	GREG MILES	Name	TAS PAPAS
Title	COO	Title	ORCA Sales Director




THIS PAYMENT SCHEDULE IS A TAX INVOICE

## Annexure A

## Payment Schedule

- 1 Product Price**  
(a) The Product Price shall be due and payable as shown in Table B of this Schedule and (b) Customer shall pay the Product Price in the instalments and on the due dates set out in Table B of this Schedule in full in cleared funds without any abatement, set-off, withholding, defense or counterclaim for any reason whatsoever (including, but not limited to, a force majeure event). The Supplier will issue a separate tax invoice to the Customer for payment of any instalment before its due date but any failure by the Supplier to issue the separate tax invoice does not affect the Customer's obligation to pay the instalments on the due dates as set out in Table B.
- 2 Assignment**  
CUSTOMER MAY NOT ASSIGN, NOVATE OR GRANT AN ENCUMBRANCE THIS SCHEDULE OR THE RIGHTS AND/OR OBLIGATIONS HEREUNDER, NOR SHALL THE CUSTOMER ENCUMBER, LEASE OR LEND THE PRODUCTS OR SUBMIT THEM TO BE USED BY ANYONE OTHER THAN CUSTOMER'S EMPLOYEES OR AGENTS WITHOUT THE PRIOR WRITTEN CONSENT OF THE SUPPLIER. The Customer agrees that the Supplier may, without notice to or consent of the Customer, assign to the benefit of a third party ("Assignee") its rights, title and interest, in whole and in part, to receive the Product Price and any other amounts payable by the Customer pursuant to the Schedule ("Assigned Payments"). The Assignee shall not be liable for or be required to perform any of the Supplier's or Product Vendor's obligations to Customer under or in connection with this Schedule, the Products or any Licence Agreement, such obligations being retained by Supplier and/or Product Vendor (as the case may be) each in their own capacity. For the avoidance of doubt, service credits, rebates or price reductions, if applicable, shall be independent of the Customer's obligation to pay the Product Price and shall not have the effect of reducing the Product Price payable. Customer's obligation to pay the Product Price and liability therefore is absolute and unconditional, and is separate and completely independent of the delivery, performance or quality of the Products and of any Licence Agreement the Customer may have with the Product Vendor or any other person and without limiting the foregoing, the Customer's obligation to pay the Product Price shall continue notwithstanding (and shall not be affected by, released and/or reduced as a result of) any of the following (each a "Relevant Event"): (a) any breach under or in connection with this Schedule, the Products or any Licence Agreement and/or any wrongful or negligent act or omission by or on behalf of the Supplier and/or the Product Vendor; (b) any dispute between the Product Vendor and/or the Supplier and the Customer; (c) any change or revision to this Schedule; (d) any termination or suspension of this Schedule in whole or in part for any reason whatsoever; (e) any accident or damage to and/or loss of any Product (or any function thereof) or the Customer being unable to use any Product, in each case for any reason whatsoever; and/or (f) any Event of Default. None of the foregoing shall affect any right the Customer may have to bring a claim in damages against the Supplier or the Product Vendors directly.
- 3 Events of Default**  
The term "Event of Default" shall mean any one or more of the following: (a) Customer shall fail to pay any Product Price when due and such failure is not cured within 10 days; (b) Customer shall fail to perform any other covenant or agreement hereunder and such failure is not cured, if capable of being remedied, within 15 days after written notice from the Supplier; (c) Customer or any guarantor of Customer's obligations (each a "Guarantor") commence any action for relief under any laws relating to bankruptcy, insolvency, reorganization or relief of debtors or is otherwise unable to pay its debts as and when they fall due; (d) Customer shall enter into a merger or other transaction in which it is not the surviving entity, sell or transfer all or substantially all of its assets, or take any step to dissolve itself or be terminated; (e) there is a change in the ownership or control of the Customer, funding arrangements, business management or financial condition of the Customer that would have a material adverse effect on the Customer's ability or willingness to perform its obligations under this Schedule; or (f) any representation or warranty made by Customer to the Supplier in connection with this Schedule shall prove at any time to have been untrue or misleading in any material respect.
- 4 Remedies**  
Upon the occurrence of any Event of Default, in whole or in part and for whatever reason, the Supplier (or Assignee, if applicable) may by notice to the Customer exercise any one or more of the following remedies: (a) declare all Product Price (or Assigned Payments, if applicable) due and unpaid on the date of Event of Default and all Product Price which would have fallen due on or after the date of Event of Default pursuant to Table A of this Schedule, accrued interest, late charges, taxes, and other amounts due under or in connection with this Schedule, to be immediately due and payable; (b) charge Customer interest on all Product Price (or Assigned Payments, if applicable) due to the Supplier (or Assignee, if applicable) at the rate of 1.5% per month or the maximum rate permitted by law, whichever is less, from the date of the Event of Default until paid in full (before and after judgment); (c) require Customer to cease use of all Product, delete all Software from Customer's computer systems and deliver all Hardware (and all documentation) to the Supplier at Customer's expense; (d) require payment of any costs incurred by the Supplier (or Assignee, if applicable) in terminating or replacing any funding arrangements entered into in connection with the provision of the Product (or provision of funds by the Assignee in connection with the assignment of rights contemplated hereunder, if applicable); and/or (e) require payment of any taxes applicable to any of the foregoing amounts (together "Termination Payment"). The Customer agrees that the Termination Payment is fair and reasonable, and is not a penalty.
- 5 Termination**  
This Schedule shall terminate on receipt of all monies due from the Customer unless terminated earlier in accordance with this clause 5. Subject to this clause, neither party shall be entitled to terminate this Schedule prior to that date. Notwithstanding the foregoing, the Supplier (or Assignee, if applicable) may terminate this Schedule by notice to the Customer at any time after the occurrence of an Event of Default. Termination shall be without prejudice to the accrued rights and remedies of either party. In particular, the Customer's obligations set out in clauses 1, 2, 4, 6 and 7 of this Schedule shall survive any such termination of this agreement.
- 6 Indemnities**  
The Customer unconditionally and irrevocably indemnifies the Supplier against liability, loss and reasonable costs, charges or expenses incurred in connection with: (a) an Event of Default; (b) any new legislation or change in any legislation or regulation, or any change in any ruling, guideline, directive or requirement issued by a governmental authority or body or any change in the interpretation of any such legislation or regulation, ruling, guideline, directive or requirement that affects this Schedule, the transactions under it, the Supplier's obligations under this Schedule or the Supplier's return under this Schedule; (c) the early termination of this Schedule; (d) any security interest provided under this Schedule not having its intended priority, failing to attach to the Product (if applicable), not being perfected, being void, illegal, invalid, unenforceable or of limited force and effect; (e) any claim or demand made by any third party in relation to the Product, including without limitation any claim for the infringement of a patent, trademark, copyright or other intellectual property right; (f) any steps taken by Supplier or the Assignee to administer, exercise, enforce or preserve any of its rights under this Schedule.
- 7 Ownership**  
Ownership of Product which is Hardware remains with the Supplier until all amounts due from the Customer under this Schedule are received by the Supplier in clear funds.
- 8 Risk of Loss, Insurance**  
Customer shall take out third-party insurance with a reputable insurer approved by the Supplier and accept responsibility for any loss or damage to the Hardware while in its possession.
- 9 Covenants**  
Customer represents, warrants and covenants to the Supplier as of the date hereof, that: (a) Customer (and each Guarantor, if any): (i) is duly organized and validly existing under the laws of the state of its organization; (ii) has adequate power and capacity to enter into this Schedule and any other documents required to be delivered in connection herewith (hereinafter "Documents"); and (iii) holds each authorization and consent necessary for it to conduct its business as it is now being conducted; (b) the Documents have been duly authorized, executed and delivered by Customer and each Guarantor and constitute valid, legal and binding agreements, enforceable in accordance with their terms; (c) Customer's payment obligations under this Schedule rank at least equally with all of its other unsecured and unsubordinated payment obligations, other than obligations that are mandatorily preferred by law; (d) Customer has disclosed to the Supplier all the information that is material to an assessment by the Supplier of the risks that it assumes by entering into this Schedule and the transactions under it; (e) Customer has not asserted against the Supplier, and has no basis to assert: (i) any set-offs, counterclaims or defences to Customer's obligation under this Schedule; or (ii) any claims in connection with the Products; (f) Customer has not received or been promised any credits, rebates, refunds or other compensation, in cash or in kind, with respect to the purchase of the Products, except as disclosed to the Supplier; and (g) Customer shall keep the Products free of all liens and encumbrances, except for the rights of Product Vendor and any Assignee.
- 10 PPSA**  
As security for Customer's obligations under this Schedule, Customer grants to Supplier a security interest in the Products. The Supplier may, at the Supplier's expense, apply for any registration, or give any notification, in connection with any security interest for the purposes of the PPSA, and for whatever class of collateral Supplier thinks fit. The Customer consents to any registration or notification by the Supplier and agrees not to make an amendment demand. The Supplier need not give any notice under the PPSA (including a notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded. The Supplier need not give any notice under the PPSA (including a notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded. The Customer agrees that the Supplier need not comply with sections 95, 118, 121(4), 125, 130, 132(3) (d) and 132(4) of the PPSA, or any other provision of the PPSA notified to the Customer by Supplier after the date of this Schedule, and the Customer may not exercise any rights under sections 142 and 143 of the PPSA, to the extent that the law permits these provisions, rights and requirements to be excluded. Whenever the Supplier or the Assignee reasonably requests Customer to do anything: (a) to ensure that this Schedule or any security interest is fully effective, enforceable and perfected with the contemplated priority; (b) for more satisfactory assuring or securing to the Supplier or the Assignee the property the subject of any such security interest in a manner consistent with this Schedule; or (c) for aiding the exercise of any power in this Schedule, the Customer shall do it promptly at its own cost. For the purposes of this clause, PPSA means the *Personal Property Securities Act 2009* (Cwlth).
- 11 Choice of Law**  
This Schedule and any non-contractual obligations arising out of or in connection with it are governed by the laws of New South Wales, Australia. Each party irrevocably and unconditionally submits to the non-exclusive jurisdictions of the Courts of New South Wales and Courts of Appeal from them.
- 12 Waivers**  
Customer shall not be discharged from its obligations hereunder except by payment and performance in full of all such obligations.
- 13 Entire Agreement**  
This Schedule contains the entire agreement between Customer and the Supplier relating to the subject matter hereof. No agreements or understandings shall be binding on the parties hereto unless set forth in writing and signed by the parties. Time is of the essence in this Schedule. Any wording of this Schedule held unenforceable in any jurisdiction shall be deemed deleted to the extent of such unenforceability without invalidating the remaining wording and/or provisions of this Schedule.





People & Technology. Together.

Annexure (A)

Agreement To. \_\_\_\_\_

Agreement No. \_\_\_\_\_

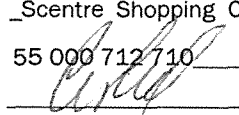
Equipment

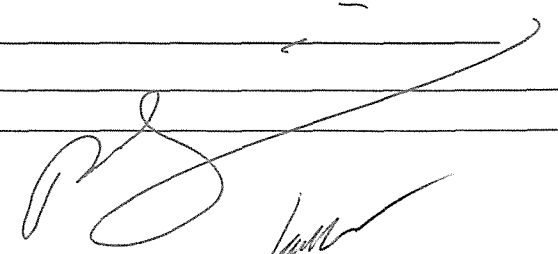
Product Description	Serial No.	Location Address
ORCA OG100	OG100 3745EK	Bondi Junction Sydney NSW
ORCA OG100	OG100 3804EK	Bondi Junction Sydney NSW
ORCA OG100	OG100 3863EK	Bondi Junction Sydney NSW
ORCA OG100	OG100 3922EK	Pitt Street Mall Sydney NSW
ORCA OG100	OG100 3981EK	Pitt Street Mall Sydney NSW
ORCA OG100	OG100 4040EK	Pitt Street Mall Sydney NSW
ORCA OG100	OG100 4099EK	Burwood NSW
ORCA OG100	OG100 4158EK	East Gardens NSW
ORCA OG100	OG100 4217EK	Parramatta NSW
ORCA OG100	OG100 4276EK	Parramatta NSW
ORCA OG100	OG100 4335EK	Parramatta NSW
ORCA OG100	OG100 4394EK	Miranda NSW
ORCA OG100	OG100 4453EK	Miranda NSW
ORCA OG100	OG100 4512EK	Liverpool NSW
ORCA OG100	OG100 4571EK	Liverpool NSW
ORCA OG100	OG100 4630EK	Hornsby NSW
ORCA OG100	OG100 4689EK	Mount Druitt NSW
ORCA OG100	OG100 4748EK	Tuggerah NSW
ORCA OG100	OG100 4807EK	Tuggerah NSW
ORCA OG100	OG100 4866EK	Chatswood NSW
ORCA OG100	OG100 4925EK	Chatswood NSW
ORCA OG100	OG100 4984EK	Warringah Mall NSW
ORCA OG100	OG100 5043EK	Warringah Mall NSW
ORCA OG100	OG100 5102EK	Penrith NSW
ORCA OG100	OG100 5161EK	Penrith NSW

Customer's Signature

Signed for and on behalf of: Scentre Shopping Centre Manangement Pty Ltd

ABN: 55 000 712 710

Signature: 





Your business. Just better.

## Certificate of Acceptance of Delivery

Forum Finance Pty Ltd. ABN 16 153 301 172 of Level 5, 141 Walker Street, North Sydney NSW 2060 (the "owner") enters into this Agreement with:

### Supplier Details

Customer Name FORUM FINANCE PTY LTD

Trading Name \_\_\_\_\_ ABN 16 153 301 172

Address LVL 5, 141 WALKER ST, NORTH SYDNEY Postcode 2060

### Customer Details

Customer Name SCENTRE SHOPPING CENTRE MANAGEMENT PTY LTD Pty Limited \_\_\_\_\_

Trading Name \_\_\_\_\_ ABN 55 000 712 710

Address 85 CASTLEREAGH STREET, SYDNEY Postcode 2001

### Payment Schedule

Payment Schedule dated on between Supplier and Customer.

### Date of Acceptance of Delivery

Date 5th OCTOBER 2018

### Products

As described in the Payment Schedule.

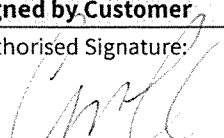
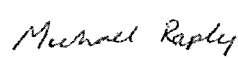
### Product price


As described in Table B in the Payment Schedule.

On the date of executing this Certificate, the Customer hereby acknowledges, agrees and declares that:

1. All Products the subject of the above Payment Schedule have been received and accepted by the Customer on the above date of acceptance of delivery for the purpose of the Payment Schedule, and complies with its description in the Payment Schedule, are in good working order and condition, are of merchantable quality and are fit for their purpose;
2. The Customer has read and fully understands the Payment Schedule (including, without limitation, the terms and conditions attached in Annexure A thereto);
3. The Product Price shown in Table B of the Payment Schedule is incurred on the above date of acceptance of delivery by Customer and Customer irrevocably commits to paying the Product Price in all circumstances and that its obligation to pay the Product Price is absolute and unconditional from the above date of acceptance of delivery of the Products; and
4. Subject to the provisions in Annexure A of the Payment Schedule, the Product Price is payable by installments in the amounts (Installment Amount) and on the due dates set out in Table B in the Payment Schedule.

Date \_\_\_\_\_

Signed by Customer	
Authorised Signature: 	Name (print): GREG MILES
	Title: COO
In the presence of: Signature of witness: 	Name (print): MICHAEL RAPLEY
	Title: Facility Manager





12 October 2018

Greg Miles – C00  
Scentre Shopping Centre Management Pty Ltd  
ABN 55 000 712 710.  
85 Castlereagh Street,  
Sydney, NSW, 2001.

**TRANSFER OF RIGHTS AND TITLE TO THE PAYMENTS AND GOODS**

Dear Greg,

Referring to your Payment Schedule dated 2 October 2018 entered into thereunder between Scentre Shopping Centre Management Pty Ltd and Forum Finance Pty Limited, we hereby give you notice, that we have unconditionally and absolutely transferred full legal and beneficial title to and right and interest in the Payment Schedule, including the payments and goods specified below ("**Purchased Assets**") to a third party financier, BHD Leasing Pty Limited ACN 154 478 707 (who is acting as agent for Westpac Institutional Bank) ("**BHD**");

Payments

*As shown in Table A to the Payment Schedule*

Goods

*As per Annexure A of the Payment Schedule*

You are hereby directed to make all payments due or to become due from you under the Payment Schedule to the following account until further notice from BHD:

Bank : Westpac Bank  
Branch : 032 298  
A/C No : 403 174  
A/C Name: BHD Leasing Pty Limited

For further information, please contact me or Luke Price at BHO Finance (02 9966 4077).

Yours faithfully,

A handwritten signature in black ink, appearing to read "Bill Papas".

Bill Papas  
For and behalf of  
**Forum Finance Pty Limited:**  
Level 5, 141 Walker Street  
North Sydney. NSW 2060

A large, stylized handwritten signature in black ink, appearing to read "Luke Price".

## NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 8/07/2021 9:00:56 PM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

### Details of Filing

Document Lodged: Affidavit - Form 59 - Rule 29.02(1)  
File Number: NSD616/2021  
File Title: WESTPAC BANKING CORPORATION ABN 33 007 457 141 v FORUM  
FINANCE PTY LIMITED & ORS  
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF  
AUSTRALIA



A handwritten signature in blue ink that reads 'Sia Lagos'.

Dated: 8/07/2021 9:02:16 PM AEST

Registrar

### Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.