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Lease of Real Estate

with Guarantee & Indemnity

(Commercial Property)

53-81 Great Ocean Road Lavers Hill

Important Notices To The Person Preparing This Lease

This lease is in a standard form. You may need to make changes to record the agreement of the landlord, tenant, and any guarantor. You should carefully check the whole document and make appropriate deletions, alterations, and/or additions so it agrees with the instructions you have received. You should note the warranty in clause 22 and record any alterations to the lease conditions in schedule item 22 and **not** in the lease conditions. If the lease is one to which the *Retail Leases Act 2003* (Vic) applies, the parties should refer to that Act for important rights and obligations that are not set out in this lease.

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The **landlord** leases the **premises** to the **tenant** for the **term** and at the **rent** and on the conditions set out in this lease together with all necessary access over any **common areas**.

The **guarantor**, if any, agrees to be bound by the **guarantor's** obligations set out in this lease.

Lease Conditions

1. DEFINITIONS AND INTERPRETATION

1.1 The listed expressions in **bold** print have the meaning set out opposite them -

EXPRESSION	MEANING
accounting period	the period of 12 months ending 30 June or other period of 12 months adopted by the landlord in respect of this lease for recovery of building outgoings and includes any broken periods at the start and end of the term
Act	the <i>Retail Leases Act 2003</i> (Vic)
Building	any building in which the premises are located, including the landlord's installations
Building outgoings	any of the following expenses (excluding capital expenses and expenses whose recovery from the tenant would be contrary to applicable legislation) incurred in respect of the land, the building, the premises or any premises in the building which include the premises - (a) rates, levies and assessments imposed by any relevant authorities; (b) taxes including land tax (unless the Act applies), calculated on the basis that the land is the only land of the landlord liable to tax and is not subject to a trust but excluding income tax and capital gains tax; (c) the costs of maintaining and repairing the building and the landlord's installations and carrying out works as required by relevant authorities (but excluding any amount recovered in respect of maintenance or repair by the landlord from its insurer); (d) premiums and charges for the following insurance policies taken out by the landlord - (i) damage to and destruction of the premises for their replacement value for the risks listed in item 11, (ii) removal of debris, (iii) breakdown of landlord's installations, (iv) breakage of glass, (v) public risk for any single event for the amount stated in item 12 (if none is stated, \$10 million) or other amount reasonably specified from time to time by the landlord, and (vi) loss of rent and outgoings for the period stated in item 13 or, if none is stated, 12 months, and excesses paid or payable on claims, and, if the premises occupy only a part of the lettable area of the building, the following further items - (e) costs incurred in providing services to the building and the land including - (i) heating, (ii) cooling, (iii) air-conditioning, (iv) cleaning, (v) pest control, (vi) waste collection, (vii) lighting, (viii) landscaping and garden maintenance, (ix) security, and (x) fire safety prevention, detection and control; (f) accountancy and audit fees; and (g) costs of whatever description, reasonably incurred by the landlord in the administration, management or operation of the building and the land, whether incurred by the landlord directly or as owners corporation levies, at cost to the landlord on the basis that an expense is deemed to have been paid at the time it fell due for payment

building rules	any rules adopted from time to time for the building , including the rules of any owners corporation affecting the premises
common areas	areas in the building or on the land that are under the control of the landlord and are used or intended for use - (a) by the public; or (b) in common by tenants of premises in the building in relation to the carrying on of businesses on those premises, other than areas which are let or licensed, or intended to be let or licensed, other than on a casual basis
Consumer Price Index	the consumer price index published by the Australian Government Statistician under the heading All Groups, Melbourne
CPI review date	a date specified in item 16(b)
fixed review date	a date specified in item 16(c)
GST	GST within the meaning of the GST Act
GST Act	<i>A New Tax System (Goods and Services Tax) Act 1999 (Cth)</i>
guarantor	the person named in item 3
item	an item in the schedule to this lease
land	the parcel of land on which the building is erected and which is described in item 4(b)
landlord	the person named in item 1 , or any other person who will be entitled to possession of the premises when this lease ends
landlord's installations	any property of the landlord , other than land or fixtures, from time to time in the premises or on the land and includes the property listed in item 5
lettable area	unless the Act applies and requires otherwise - (a) in relation to the premises, the area let; and (b) in relation to the building, the total area of the building that is let or licensed or intended to be let or licensed, other than on a casual basis. When it is necessary to measure the lettable area of the building or any part of the building, the measurement is to be carried out using the most recent revision of the relevant Property Council of Australia method of measurement
market review date	a date specified in item 16(a)
permitted use	the use specified in item 15
PPSA	the <i>Personal Property Securities Act 2009 (Cth)</i>
premises	the premises described in item 4(a) and fixed improvements and the landlord's installations within the premises
rent	the amount in item 6 , as varied in accordance with this lease
review date	a date specified in item 16
start of the lease	the first day of the term but, if this lease is a renewal under an option in an earlier lease (whether or not this lease is on terms that are materially different to those contemplated by the earlier lease), the starting date of the first lease to contain an option for renewal.
tenant	the person named in item 2 , or any person to whom the lease has been transferred
tenant's agents	the tenant's employees, agents, contractors, customers and visitors to the premises
tenant's installations	the items of equipment and fittings listed in item 7 and those introduced by the tenant after the lease starts
term	the period stated in item 8
valuer	a person holding the qualifications or experience specified under section 13DA(2) of the <i>Valuation of Land Act 1960 (Vic)</i> and, if the Act applies, a specialist retail valuer.

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- 1.2 References to laws include statutes, regulations, instruments and by-laws and all other subordinate legislation or orders made by any authority with jurisdiction over the **premises**. Illegal means contrary to a law as defined in this sub-clause.
- 1.3 This lease must be interpreted so that it complies with all laws applicable in Victoria. If any provision of this lease does not comply with any law, then the provision must be read down so as to give it as much effect as possible. If it is not possible to give the provision any effect at all, then it must be severed from the rest of the lease.
- 1.4 The law of Victoria applies to this lease.
- 1.5 Any change to this lease must be in writing and signed by the parties.
- 1.6 If a party consists of more than one person –
(a) the acts and omissions of any of them bind all of them; and
(b) an obligation imposed by this lease on or in favour of more than one person binds or benefits them separately, together and in any combination.
- 1.7 The use of one gender includes the others and the singular includes the plural and vice versa.
- 1.8 If the **landlord**, **tenant** or **guarantor** is an individual, this lease binds that person's legal personal representative. If any of them is a corporation, this lease binds its transferees.
- 1.9 This lease, including all guarantees and indemnities, is delivered and operates as a deed.
- 1.10 The **tenant** is bound by and answerable for the acts and omissions of the **tenant's agents**.
- 1.11 If there is a conflict between a provision in the schedule and one of these lease conditions then the provision in the schedule is to prevail.
- 1.12 "Include" and every form of that word is to be read as if followed by "(without limitation)".
- 1.13 This lease includes the schedule.
- 1.14 The parties consider that the application of the **Act** to this lease is as specified in **item 15** and, if **item 15** states that the **Act** does not apply, that the reason is as specified in **item 15**.

2. TENANT'S PAYMENT, USE AND INSURANCE OBLIGATIONS

- 2.1 The **tenant** must –
- 2.1.1 pay the **rent** without any set-off (legal or equitable) or deduction whatever to the **landlord** on the days and in the way stated in **item 9** without the need for a formal demand. The **landlord** may direct in writing that the **rent** be paid to another person. The **rent** is reviewed on each **review date** specified in **item 16** –
(a) on a **market review date**, the **rent** is reviewed in accordance with clause 11,
(b) on a **CPI review date**, the **rent** is reviewed in accordance with clause 18, and
(c) on a **fixed review date**, the **rent** is either increased by the fixed percentage or changed by or to the fixed amount, in either case as specified in **item 16** in respect of that **fixed review date**.
- 2.1.2 produce receipts for paid **building outgoings** within 7 days of a request.
- 2.1.3 pay when due all charges for the provision of services to the **premises** including gas, electricity, water and telephone.
- 2.1.4 remove regularly from the **premises** all rubbish and waste generated by the **tenant's** operations.
- 2.1.5 pay the proportion of the **building outgoings** specified in **item 10** in accordance with clause 5.4.
- 2.1.6 pay or reimburse within 7 days of a request all increases in insurance premiums paid or payable by the **landlord** as the result of the **tenant's** use of the **premises**.
- 2.1.7 pay within 7 days of a request interest at the rate stated in **item 14** on any **rent** or other money which the **tenant** has not paid within 7 days of the due date. Interest is to be calculated daily from the due date, continues until the overdue money is paid and is capitalised monthly.
- 2.1.8 pay within 7 days of a request the **landlord's** reasonable expenses and legal costs in respect of –
(a) the negotiation, preparation, settling, execution and stamping (if applicable) of this lease,
(b) change to this lease requested by the **tenant** whether or not the change occurs,
(c) the surrender or ending of this lease (other than by expiration of the **term**) requested by the **tenant**, whether or not the lease is surrendered or ended,
(d) the transfer of this lease or subletting of the **premises** or proposed transfer or subletting whether or not the transfer or subletting occurs,

- (e) a request by the **tenant** for consent or approval, whether or not consent or approval is given,
 - (f) any breach of this lease by the **tenant**, or
 - (g) the exercise or attempted exercise by the **landlord** of any right or remedy against the **tenant**,
- but, if the **Act** applies, only to the extent to which the **Act** permits recovery.

- 2.1.9 pay any stamp duty on this lease, on any renewal, and any additional stamp duty after a review of **rent**.
- 2.1.10 subject to clauses 3.3.2 and 3.3.3, comply with all laws relating to the use or occupation of the **premises**.
- 2.1.11 carry on the business of the **permitted use** efficiently and, subject to all applicable laws, keep the **premises** open during the business hours which are normal for the **permitted use** and not suspend or discontinue the operation of the business.
- 2.1.12 comply with the **landlord's** reasonable requirements in relation to the use of the **landlord's installations** and any services provided by the **landlord**.
- 2.1.13 subject to clauses 3.3.2 and 3.3.3, comply with the laws and requirements of relevant authorities relating to essential safety measures, occupational health and safety and disability discrimination relevant to the **premises** or the **building**.

2.2 The **tenant** must not, and must not let anyone else -

- 2.2.1 use the **premises** except for the **permitted use**, but the **tenant** agrees that the **landlord** has not represented that the **premises** may be used for that use according to law or that the **premises** are suitable for that use.
- 2.2.2 use the **premises** for any illegal purpose.
- 2.2.3 carry on any noxious or offensive activity on the **premises**.
- 2.2.4 do anything which might cause nuisance, damage or disturbance to a tenant, occupier or owner of any adjacent property.
- 2.2.5 conduct an auction or public meeting on the **premises**.
- 2.2.6 use radio, television or other sound-producing equipment at a volume that can be heard outside the **premises**.
- 2.2.7 do anything which might affect any insurance policy relating to the **premises** by causing -
 - (a) it to become void or voidable,
 - (b) any claim on to be rejected, or
 - (c) a premium to be increased.
- 2.2.8 keep or use chemicals, inflammable fluids, acids, or other hazardous things on the **premises** except to the extent necessary for the **permitted use**, or create fire hazards.
- 2.2.9 do anything which might prejudicially affect the essential safety measures or the occupational health and safety or disability discrimination status of the **premises** or the **building**.
- 2.2.10 place any sign on the exterior of the **premises** without the **landlord's** written consent.
- 2.2.11 make any alteration or addition, or affix any object, to the **premises** except with the **landlord's** written consent; consent is at the **landlord's** discretion for any alteration, addition or affixation affecting the structure of the **building** or any of the infrastructure for the provision of services to the **building** but, otherwise, clause 9.1 applies. In undertaking any work for which the **landlord's** consent has been obtained, the **tenant** must strictly conform to plans approved by the **landlord** and comply with all reasonable conditions imposed on that consent by the **landlord** and the requirements of each authority with jurisdiction over the **premises**.
- 2.2.12 bring onto the **premises** any object which, due to its nature, weight, size or operation, might cause damage to the **premises**, the **building**, or the effective operation of the infrastructure for the provision of services to the **premises** or the **building** without the **landlord's** written consent.
- 2.2.13 except in an emergency, interfere with any infrastructure for the provision of services in the **premises**, the **building**, or in any property of which the **premises** are part.

2.3 The **tenant** must -

- 2.3.1 take out and keep current an insurance cover for the **premises** in the name of the **tenant** and noting the interest of the **landlord**, for public risk for any single event for the amount stated in **item 12** or, if none is stated, for \$10 million, with an extension which includes the indemnities given by the **tenant** to the **landlord** in clauses 5.2 and 5.3.2 of this lease to the extent that such an extension is procurable on reasonable terms in the Australian insurance market.

- 2.3.2 maintain the insurance cover with an insurer approved by the **landlord**.
- 2.3.3 produce satisfactory evidence of insurance cover on written request by the **landlord**.

3. REPAIRS, MAINTENANCE, FIRE PREVENTION AND REQUIREMENTS OF AUTHORITIES

3.1 Subject to clause 3.3, the **tenant** must -

- 3.1.1 keep the **premises** in the same condition as at the **start of the lease**, except for fair wear and tear; and
- 3.1.2 comply with all notices and orders affecting the **premises** which are issued during the **term** except any notices or orders that applicable legislation makes the responsibility of the **landlord**.

3.2 In addition to its obligations under clause 3.1, the **tenant** must -

- 3.2.1 repaint or refinish all painted or finished surfaces in a workmanlike manner with as good quality materials as previously at least once every 5 years during the **term** and any further term viewed as one continuous period.
- 3.2.2 keep the **premises** properly cleaned and free from rubbish, keep waste in proper containers and have it removed regularly.
- 3.2.3 immediately replace glass which becomes cracked or broken with glass of the same thickness and quality.
- 3.2.4 immediately repair defective windows, light fittings, doors, locks and fastenings, and replace missing or inoperative light-globes and fluorescent tubes, keys and keycards.
- 3.2.5 maintain in working order all plumbing, drainage, gas, electric, solar and sewerage installations.
- 3.2.6 promptly give written notice to the **landlord** or **landlord's** agent of -
 - (a) damage to the **premises** or of any defect in the structure of, or any of infrastructure for the provision of services to, the **premises**,
 - (b) receipt of a notice or order affecting the **premises**,
 - (c) any hazards threatening or affecting the **premises**, and
 - (d) any hazards arising from the **premises** for which the **landlord** might be liable.
- 3.2.7 immediately make good damage caused to adjacent property by the **tenant** or the **tenant's agents**.
- 3.2.8 permit the **landlord**, its agents or workmen to enter the **premises** during normal business hours, after giving reasonable notice (except in cases of emergency) -
 - (a) to inspect the **premises**,
 - (b) to carry out repairs or agreed alterations, and
 - (c) to do anything necessary to comply with notices or orders of any relevant authority, bringing any necessary materials and equipment.
- 3.2.9 carry out repairs within 14 days of being served with a written notice of any defect or lack of repair which the **tenant** is obliged to make good under this lease. If the **tenant** does not comply with the notice, the **landlord** may carry out the repairs and the **tenant** must repay the cost to the **landlord** within 7 days of a request.
- 3.2.10 only use persons approved by the **landlord** to repair and maintain the **premises** but, if the **Act** applies, only use persons who are suitably qualified.
- 3.2.11 comply with all reasonable directions of the **landlord** or the insurer of the **premises** as to the prevention, detection and control of fire.
- 3.2.12 on vacating the **premises**, remove all signs and make good any damage caused by installation or removal.
- 3.2.13 take reasonable precautions to secure the **premises** and their contents from theft, keep all doors and windows locked when the **premises** are not in use and comply with the **landlord's** directions for the use and return of keys or keycards.
- 3.2.14 permit the **landlord** or its agent access to the **premises** at reasonable times by appointment to show the **premises** -
 - (a) to valuers and to the **landlord's** consultants,
 - (b) to prospective purchasers at any time during the **term**, and
 - (c) to prospective tenants within 3 months before the end of the **term** (unless the **tenant** has exercised an option to renew this lease)

and to affix "for sale" or "to let" signs in a way that does not unduly interfere with the **permitted use**.

3.2.15 maintain any grounds and gardens of the **premises** in good condition, tidy, free from weeds and well-watered.

3.2.16 maintain and keep in good repair any heating, cooling or air conditioning equipment exclusively serving the **premises**.

3.3 The **tenant** is not obliged -

3.3.1 to repair damage against which the **landlord** must insure under clause 6.2 or to reimburse the **landlord** for items of expense or damage that would be covered under insurance of the type specified unless the **landlord** loses or, where the **landlord** has failed to insure as required, would have lost, the benefit of the insurance because of acts or omissions by the **tenant** or the **tenant's agents**.

3.3.2 to carry out structural or capital repairs or alterations or make payments of a capital nature unless the need for them results from -

- (a) negligence by the **tenant** or the **tenant's agents**,
- (b) failure by the **tenant** to perform its obligations under this lease,
- (c) the **tenant's** use of the **premises**, other than reasonable use for the **permitted use**, or
- (d) the nature, location or use of the **tenant's installations**,

in which case the repairs, alterations or payments are the responsibility of the **tenant**.

3.3.3 to carry out any work that applicable legislation makes the responsibility of the **landlord**.

4. LEASE TRANSFERS AND SUBLETTING

4.1 The **tenant** must not transfer this lease or sublet the **premises** without the **landlord's** written consent, and section 144 of the *Property Law Act 1958* (Vic) and clause 9.1 do not apply.

4.2 The **landlord** -

4.2.1 subject to sub-clause 4.2.2, must not unreasonably withhold consent to a transfer of this lease or a sublease of the **premises** if the **tenant** has complied with the requirements of clause 4.3 and the proposed transferee or subtenant proposes to use the **premises** in a way permitted under this lease. If the **Act** applies, the **landlord** may only withhold consent to a transfer of this lease in accordance with the **Act**.

4.2.2 may withhold consent at the **landlord's** discretion if the **Act** does not apply, and a transfer of this lease would result in the **Act** applying, or applying if this lease is renewed for a further term.

4.3 To obtain the **landlord's** consent to a transfer or sublease the **tenant** must -

4.3.1 ask the **landlord** in writing to consent to the transfer or sublease,

4.3.2 give the **landlord** -

- (a) in relation to each proposed new tenant or sub-tenant such information as the **landlord** reasonably requires about its financial resources and business experience and if the **Act** does not apply, any additional information reasonably required by the **landlord** to enable it to make a decision, and
- (b) a copy of the proposed document of transfer or sublease, and

4.3.3 remedy any breach of the lease which has not been remedied and of which the **tenant** has been given written notice.

4.4 If the **Act** applies and -

4.4.1 the **tenant** has asked the **landlord** to consent to a transfer and complied with clause 4.3 and section 61 of the **Act**, and

4.4.2 the **landlord** fails to respond by giving or withholding consent to the transfer within 28 days, then the **landlord** is to be taken as having consented.

4.5 If the **landlord** consents to the transfer or sublease, the **landlord**, **tenant** and new tenant or sub-tenant and the **guarantor** must execute the documents submitted under sub-clause 4.3.2(b). The directors of the new tenant (if it is a corporation) must execute a guarantee and indemnity in the terms of clause 15.

4.6 The **tenant** must pay the **landlord's** reasonable expenses incurred in connection with an application for consent or the granting of consent and the completion of the documents, as well as any stamp duty on the documents.

4.7 Except by a transfer or sublease to which the **landlord** has consented, or is to be taken as having consented, the **tenant** must not give up possession or share occupancy of the **premises** or grant a licence

to anyone else or mortgage or charge its interest under this lease or enter into any arrangement that gives a person the right to enter into occupation of the **premises** without the **landlord's** written consent; consent is at the **landlord's** discretion.

- 4.8 Subject to the **Act**, if it applies, the obligations to the **landlord** of every **tenant** who has transferred this lease continue until this lease ends. They do not continue into any period of overholding after this lease ends, nor into any renewed term: at those times they are the responsibility only of the **tenant** in possession. This clause does not prevent the **landlord** from enforcing rights which arise before this lease ends.

5. GENERAL AGREEMENTS BETWEEN LANDLORD AND TENANT

- 5.1 When the **term** ends, the **tenant** must -

- 5.1.1 return the **premises** to the **landlord** clean and in the condition required by this lease, and
5.1.2 remove the **tenant's installations** and other **tenant's** property from the **premises** and make good any damage caused in installing or removing them.

If the **tenant** leaves any **tenant's installations** or other **tenant's** property on the **premises** after the end of the lease, unless the **landlord** and **tenant** agree otherwise -

- 5.1.3 all items of **tenant's installations** and **tenant's** property will be considered abandoned and will become the property of the **landlord**, but the **landlord** may remove any of the **tenant's installations** or other property of the **tenant** and recover the costs of removal and making good as a liquidated debt payable on demand; and

- 5.1.4 the parties intend that clause 5.1.3 operate in relation to **tenant's installations** and **tenant's** property in place of any legislation that might otherwise apply to goods remaining on the **premises**.

- 5.2 The **tenant** indemnifies the **landlord** against any claim resulting from any act or failure to act by the **tenant** or the **tenant's agents** while using the **premises**.

- 5.3 The **tenant** -

- 5.3.1 uses and occupies the **premises** at its own risk, and
5.3.2 releases the **landlord** from and indemnifies the **landlord** against all claims resulting from incidents occurring on the **premises** (except to the extent caused or contributed to by the **landlord**, or a person for whom the **landlord** is responsible) or resulting from damage to adjacent premises covered by clause 3.2.7.

- 5.4 In relation to **building outgoing**s -

- 5.4.1 the **landlord** must pay the **building outgoing**s when they fall due for payment but, if the **landlord** requires, the **tenant** must pay when due a **building outgoing** for which the **tenant** receives notice directly and reimburse the **landlord** within 7 days of a request all **building outgoing**s for which notices are received by the **landlord**.

- 5.4.2 the **tenant** must pay or reimburse the **landlord** the proportion specified in item 10.

- 5.4.3 at least 1 month before the start of an **accounting period**, the **landlord** may, or if the **Act** applies must, give the **tenant** an estimate of **building outgoing**s for the **accounting period**.

- 5.4.4 despite clause 5.4.1, if the **landlord** requires, the **tenant**, must pay its share of the estimated **building outgoing**s by equal monthly instalments during the **accounting period** on the days on which **rent** is payable (after allowing for **building outgoing**s paid directly or separately reimbursed by the **tenant**).

- 5.4.5 if the **Act** applies, the **landlord** must make a statement of **building outgoing**s available during each **accounting period** as required by the **Act**.

- 5.4.6 within 3 months after the end of an **accounting period**, the **landlord** must give the **tenant** a statement of the actual **building outgoing**s for the **accounting period** (if the **Act** applies and requires that the statement be accompanied by a report by a registered company auditor, the statement must be accompanied by a report complying with section 47(5); if the **Act** applies but does not require that the statement be accompanied by a report by a registered company auditor, the statement must be accompanied by the items specified in section 47(6)(b)).

- 5.4.7 the **tenant** must pay any deficiency or the **landlord** must repay any excess, within 1 month after a statement is provided under clause 5.4.6 or within 4 months after the end of the **accounting period**, whichever is earlier.

- 5.4.8 the parties must make an appropriate adjustment for any **building outgoing** incurred in respect of a period beginning before the start of the **term** or extending beyond the end of the **term**.

- 5.5 If the freehold of the **premises** (or the **building**) is transferred, the transferor **landlord** is released from all lease obligations falling due for performance on or after the date of the instrument of transfer.

- 5.6 Payment or tender by cheque is not effective until clearance of funds.

6. LANDLORD'S OBLIGATIONS

- 6.1 The **landlord** must give the **tenant** quiet possession of the **premises** without any interruption by the **landlord** or anyone connected with the **landlord** as long as the **tenant** does what it must under this lease.
- 6.2 The **landlord** must take out at the start of the **term** and keep current policies of insurance for the risks listed in **item 11** against -
- 6.2.1 damage to and destruction of the **building**, for its replacement value,
 - 6.2.2 removal of debris,
 - 6.2.3 breakdown of **landlord's installations**, and
 - 6.2.4 breakage of glass, for its replacement value.
- 6.3 The **landlord** must give to the **tenant** the written consent to this lease of each mortgagee whose interest would otherwise have priority over this lease by endorsement on this lease in the terms set out following the 'execution and attestation' section.
- 6.4 The **landlord** must keep the structure (including the external faces and roof) of the **building** and the **landlord's installations** in a condition consistent with their condition at the **start of the lease**, but is not responsible for repairs which are the responsibility of the **tenant** under clauses 3.1, 3.2 and 3.3.2.

7. EVENTS OF DEFAULT AND LANDLORD'S RIGHTS

- 7.1 The **landlord** may terminate this lease, by re-entry or notice of termination, if -
- 7.1.1 the **rent** is unpaid after the day on which it falls due for payment,
 - 7.1.2 the **tenant** does not meet its obligations under this lease,
 - 7.1.3 the **tenant** is a corporation and -
 - (a) an order is made or a resolution is passed to wind it up except for reconstruction or amalgamation,
 - (b) goes into liquidation,
 - (c) is placed under official management,
 - (d) has a receiver, including a provisional receiver, or receiver and manager of any of its assets or an administrator appointed,
 - (e) without the **landlord's** written consent, there is a different person in effective control of the **tenant** as a result of changes in -
 - (i) membership of the company or its holding company,
 - (ii) beneficial ownership of the shares in the company or its holding company, or
 - (iii) beneficial ownership of the business or assets of the company,

but this paragraph does not apply if the **tenant** is a public company listed on a recognised Australian public securities exchange, or a subsidiary of one.

"Effective control" means the ability to control the composition of the board of directors or having more than 50% of the shares giving the right to vote at general meetings,
 - 7.1.4 a warrant issued by a court to satisfy a judgement against the **tenant** or a **guarantor** is not satisfied within 30 days of being issued,
 - 7.1.5 a **guarantor** is a natural person and -
 - (a) becomes bankrupt,
 - (b) takes or tries to take advantage of Part X of the *Bankruptcy Act* 1966 (Cth),
 - (c) makes an assignment for the benefit of their creditors, or
 - (d) enters into a composition or arrangement with their creditors,
 - 7.1.6 a **guarantor** is a corporation and one of the events specified in (a) to (e) of clause 7.1.3 occurs in relation to it, or
 - 7.1.7 the **tenant**, without the **landlord's** written consent -
 - (a) discontinues its business on the **premises**, or
 - (b) leaves the **premises** unoccupied for 14 days.
- 7.2 Termination by the **landlord** ends this lease, but the **landlord** retains the right to sue the **tenant** for unpaid money or for damages (including damages for the loss of the benefits that the **landlord** would have received if the lease had continued for the full **term**) for breaches of its obligations under this lease.

- 7.3 For the purpose of section 146(1) of the *Property Law Act 1958* (Vic), 14 days is fixed as the period within which the **tenant** must remedy a breach capable of remedy and pay reasonable compensation for the breach.
- 7.4 Breach by the **tenant** of any of the following clauses of this lease is a breach of an essential term and constitutes repudiation: 2.1.1, 2.1.5, 2.1.6, 2.1.10, 2.1.11, 2.2.1, 2.2.2, 2.2.7, 2.2.8, 2.2.9, 2.2.11, 2.2.12, 2.3, 3.2.11, 4.1, 4.7, 5.4.2, 5.4.7, 13 and 17. Other **tenant** obligations under this lease may also be essential.
- 7.5 Before terminating this lease for repudiation (including repudiation consisting of the non-payment of rent), or for an event to which section 146(1) of the *Property Law Act 1958* (Vic) does not extend, the **landlord** must give the **tenant** written notice of the breach and a period of 14 days in which to remedy it (if it is capable of remedy) and to pay reasonable compensation for it. A notice given in respect of a breach amounting to repudiation is not an affirmation of the lease.
- 7.6 Even though the **landlord** does not exercise its rights under this lease on one occasion, it may do so on any later occasion.

8. DESTRUCTION OR DAMAGE

- 8.1 If the **premises** or the **building** are damaged so that the **premises** are unfit for use for the **permitted use** or inaccessible-
- 8.1.1 a fair proportion of the **rent** and **building outgoings** is to be suspended until the **premises** are again wholly fit for the **permitted use**, and accessible, and
- 8.1.2 the suspended proportion of the **rent** and **building outgoings** must be proportionate to the nature and extent of the unfitness for use or inaccessibility.
- 8.2 If the **premises** or the **building** are partly destroyed, but not substantially destroyed, the **landlord** must reinstate the **premises** or the **building** as soon as reasonably practicable.
- 8.3 If the **premises** or the **building** are wholly or substantially destroyed -
- 8.3.1 the **landlord** is not obliged to reinstate the **premises** or the **building**, and
- 8.3.2 if the reinstatement does not start within 3 months, or is not likely to be completed within 9 months, the **landlord** or the **tenant** may end this lease by giving the other written notice.
- 8.4 The **tenant** will not be entitled to suspension of **rent** or **building outgoings** under sub-clause 8.1.1 nor to end the lease under sub-clause 8.3.2 and the **landlord** will not be obliged to reinstate the **premises** or the **building** under clause 8.2 if payment of an insurance claim is properly refused in respect of the damage or destruction because of any act or omission by the **tenant** or the **tenant's agents**.
- 8.5 If the **Act** does not apply and there is a dispute under this clause, the **landlord** or the **tenant** may request the President of the Australian Property Institute, Victorian Division, to nominate a practising valuer member of that Institute to determine the dispute or the **landlord** and **tenant** may refer the dispute to mediation under clause 16 unless **item 21** states that the mediation procedure does not apply to this lease. The valuer acts as an expert and not as an arbitrator and the determination is binding.

9. CONSENTS AND WARRANTIES BY THE PARTIES

- 9.1 Subject to the **Act** (if it applies), the **landlord** must not unreasonably withhold its consent or approval to any act by the **tenant** or matter which needs consent or approval unless any other clause provides otherwise, but -
- 9.1.1 the **landlord** may impose reasonable conditions on any consent or approval, and
- 9.1.2 the **tenant** must reimburse the **landlord's** reasonable expenses resulting from an application for its consent or approval, including fees paid to consultants.
- 9.2 This lease, together with (if the **Act** applies) any disclosure statement, contains the whole agreement of the parties. Neither the **landlord** nor the **tenant** is entitled to rely on any warranty or statement in relation to -
- 9.2.1 the conditions on which this lease has been agreed,
- 9.2.2 the provisions of this lease, or
- 9.2.3 the **premises**
- which is not contained in those documents.

10. OVERHOLDING AND ABANDONMENT OF THE PREMISES

- 10.1 If the **tenant** remains in possession of the **premises** without objection by the **landlord** after the end of the **term** -
- 10.1.1 the **tenant**, without any need for written notice of any kind, is a monthly tenant on the conditions in this lease, modified so as to apply to a monthly tenancy,

- 10.1.2 the **landlord** or the **tenant** may end the tenancy by giving one month's written notice to the other which may expire on any day of the month,
- 10.1.3 the monthly rent starts at one-twelfth of the annual **rent** which the **tenant** was paying immediately before the **term** ended unless a different rent has been agreed, and
- 10.1.4 the **landlord** may increase the monthly rent by giving the **tenant** one month's written notice.

10.2 If the **tenant** vacates the **premises** during the **term**, whether or not it ceases to pay **rent** -

- 10.2.1 the **landlord** may -
 - (a) accept the keys,
 - (b) enter the **premises** to inspect, maintain or repair them, or
 - (c) show the **premises** to prospective tenants or purchasers,
 without this being re-entry or an acceptance of repudiation or a waiver of the **landlord's** rights to recover **rent** or other money under this lease.
- 10.2.2 this lease continues until a new tenant takes possession of the **premises**, unless the **landlord**-
 - (a) accepts a surrender of the lease, or
 - (b) notifies the **tenant** in writing that the **landlord** accepts the **tenant's** repudiation of the lease, or
 - (c) ends the lease in accordance with clause 7.1.

11. RENT REVIEWS TO MARKET

11.1 In this clause "review period" means the period following each **market review date** until the next **review date** or the end of this lease.

The review procedure on each **market review date** is -

- 11.1.1 each review of **rent** may be initiated by the **landlord** or the **tenant** unless **item** 17 states otherwise but, if the **Act** applies, review is mandatory.
- 11.1.2 the **landlord** or the **tenant** entitled to initiate a review does so by giving the other a written notice stating the current market rent which it proposes as the **rent** for the review period. If the **Act** does not apply and the recipient of the notice does not object in writing to the proposed rent within 14 days the proposed **rent** becomes the **rent** for the review period.
- 11.1.3 If -
 - (a) the **Act** does not apply and the recipient of the notice serves an objection to the proposed rent within 14 days and the **landlord** and **tenant** do not agree on the **rent** within 14 days after the objection is served, or
 - (b) the **Act** applies and the **landlord** and **tenant** do not agree on what the **rent** is to be for the review period,

the **landlord** and **tenant** must appoint a **valuer** to determine the current market **rent**.

If the **Act** does not apply and if the **landlord** and **tenant** do not agree on the name of the **valuer** within 28 days after the objection is served, either may apply to the President of the Australian Property Institute, Victorian Division to nominate the **valuer**. If the **Act** applies, the **valuer** is to be appointed by agreement of the **landlord** and **tenant**, or failing agreement, by the Small Business Commissioner.

- 11.1.4 In determining the current market **rent** for the **premises** the **valuer** must -
 - (a) consider any written submissions made by the **landlord** and **tenant** within 21 days of their being informed of the **valuer's** appointment, and
 - (b) determine the current market rent as an expert
 and, whether or not the **Act** applies, must make the determination in accordance with the criteria set out in section 37(2) of the **Act**.
- 11.1.5 The **valuer** must make the determination of the current market rent and inform the **landlord** and **tenant** in writing of the amount of the determination and the reasons for it as soon as possible after the end of the 21 days allowed for submissions by the parties.

- 11.1.6 If -
 - (a) no determination has been made within 45 days (or such longer period as is agreed by the **landlord** and the **tenant** or, if the **Act** applies, as is determined in writing by the Small Business Commissioner) of the **landlord** and **tenant**
 - (i) appointing the **valuer**, or
 - (ii) being informed of the **valuer's** appointment, or
 - (b) the **valuer** resigns, dies, or becomes unable to complete the valuation,
 then the **landlord** and **tenant** may immediately appoint a replacement **valuer** in accordance with sub-clause 11.1.3.

- 11.2 The **valuer's** determination is binding.
- 11.3 The **landlord** and **tenant** must bear equally the **valuer's** fee for making the determination and if either pays more than half the fee, may recover the difference from the other.
- 11.4 Until the determination is made by the **valuer**, the **tenant** must continue to pay the same **rent** as before the **market review date** and within 7 days of being informed of the **valuer's** determination, the parties must make any necessary adjustments.
- 11.5 If the **Act** does not apply, a delay in starting a market review does not prevent the review from taking place and being effective from the **market review date** but if the market review is started more than 12 months after the **market review date**, the review takes effect only from the date on which it is started.

12. FURTHER TERM(S)

- 12.1 The **tenant** has an option to renew this lease for the further term or terms stated in **item 18** and the **landlord** must renew this lease for that further term or those further terms if -
- 12.1.1 there is no unremedied breach of this lease by the **tenant** of which the **landlord** has given the **tenant** written notice at the time the **tenant** requests renewal as required by clause 12.1.13,
 - 12.1.2 the **tenant** has not persistently committed breaches of this lease of which the **landlord** has given written notice during the **term**, and
 - 12.1.3 the **tenant** has exercised the option for renewal in writing not more than 6 months nor less than 3 months before the end of the **term**. The earliest and latest dates for exercising the option are stated in **item 19**.
- 12.2 The lease for the further term -
- 12.2.1 starts on the day after the **term** ends,
 - 12.2.2 has a starting **rent** determined in accordance with clause 11 as if the first day of the further term were specified as a **market review date** in **item 16(a)**, and
 - 12.2.3 must contain the same terms as this lease (but with no option for renewal after the last option for a further term stated in **item 18** has been exercised) including any provisions appearing in this document that may have been read down or severed to comply with any applicable law that has ceased to be applicable, as if they had not been read down or severed.
- 12.3 If the **tenant** is a corporation and was required to provide directors' guarantees for this lease, the **tenant** must provide guarantees of its obligations under the renewed lease by its directors, and by each person who has provided a guarantee for the expired **term**, in the terms of clause 15.

13. SECURITY DEPOSIT

- 13.1 The **tenant** must pay a security deposit to the **landlord** of the amount stated in **item 20** and must maintain the deposit at that amount.
- 13.2 Any security deposit not in the form of a guarantee must be invested in an interest bearing deposit and all interest accruing on it is treated as a supplementary payment of security deposit. When the **term** starts, the **tenant** must provide the **landlord** with the **tenant's** tax file number.
- 13.3 The **landlord** may use the deposit to make good the cost of remedying breaches of the **tenant's** obligations under this lease (or any of the events specified in clause 7.1) and the **tenant** must pay whatever further amount is required to bring the deposit back to the required level.
- 13.4 As soon as practicable after this lease has ended and the **tenant** has vacated the **premises** and performed all of its obligations under the lease, the **landlord** must refund the unused part of the deposit.
- 13.5 The **tenant** may, and if the **landlord** requires must, provide the security deposit by means of a guarantee by an ADI within the meaning of the *Banking Act 1959* (Cth).
- 13.6 If the freehold of the **premises** is transferred:
- 13.6.1 the **tenant** must provide a replacement guarantee in exchange for the existing guarantee if requested by the **landlord** in writing to do so, but the **landlord** must pay the reasonable fees charged by the ADI for the issue of the replacement guarantee, and
 - 13.6.2 the **landlord** must transfer any security deposit held under this lease to the transferee.

14. NOTICES

- 14.1 A notice given under this lease may be given -
- 14.1.1 by pre-paid post,
 - 14.1.2 by delivery

14.1.3 by email, or

14.1.4 in any manner authorised by law or the Supreme Court for service of documents, including any manner authorised for service on or by a legal practitioner,

to the party's last known address, registered office, or (if to the **tenant**) at the **premises**.

14.2 Posted notices will be taken to have been received on the second day after posting that is not a Saturday, Sunday or bank holiday in place of intended receipt, unless proved otherwise.

14.3 Notices delivered or sent by email are taken to have been served or given at the time of receipt as specified in section 13A of the *Electronic Transactions (Victoria) Act 2000*.

15. OBLIGATIONS OF GUARANTOR(S) UNDER GUARANTEE AND INDEMNITY

15.1 The **guarantor** in consideration of the **landlord** having entered into this lease at the **guarantor's** request —

15.1.1 guarantees that the **tenant** will perform all its obligations under this lease for the **term** and any further term or terms and during any period of overholding after the end of the **term**,

15.1.2 must pay on demand any amount which the **landlord** is entitled to recover from the **tenant** under this lease whether in respect of the **term**, any further term or further terms or any period of overholding, and

15.1.3 indemnifies the **landlord** against all loss resulting from the **landlord's** having entered into this lease whether from the **tenant's** failure to perform its obligations under it or from this lease being or becoming unenforceable against the **tenant** and whether in respect of the **term**, any further term or any period of overholding.

15.2 The liability of the **guarantor** will not be affected by -

15.2.1 the **landlord** granting the **tenant** or a **guarantor** time or any other indulgence, or agreeing not to sue the **tenant** or another **guarantor**,

15.2.2 failure by any **guarantor** to sign this document,

15.2.3 transfer (except in accordance with the **Act**, if the **Act** applies) or variation of this lease, but if this lease is transferred the **guarantor's** obligations, other than those which have already arisen, end when the **term** ends and do not continue into a term renewed by a new tenant nor a period of overholding by a new tenant,

15.2.4 the fact that this lease is subsequently registered at the Land Registry or not registered, or, for any reason, is incapable of registration, or

15.2.5 transfer of the freehold of the **premises**.

15.3 The **guarantor** agrees that —

15.3.1 the **landlord** may retain all money received including dividends from the **tenant's** bankrupt estate, and need allow the **guarantor** a reduction in its liability under this guarantee only to the extent of the amount received,

15.3.2 the **guarantor** must not seek to recover money from the **tenant** to reimburse the **guarantor** for payments made to the **landlord** until the **landlord** has been paid in full,

15.3.3 the **guarantor** must not prove in the bankruptcy or winding up of the **tenant** for any amount which the **landlord** has demanded from the **guarantor**, and

15.3.4 the **guarantor** must pay the **landlord** all money which the **landlord** refunds to the **tenant's** liquidator or trustee in bankruptcy as preferential payments received from the **tenant**.

15.4 If any of the **tenant's** obligations are unenforceable against the **tenant**, then this clause is to operate as a separate indemnity and the **guarantor** indemnifies the **landlord** against all loss resulting from the **landlord's** inability to enforce performance of those obligations. The **guarantor** must pay the **landlord** the amount of the loss resulting from the unenforceability.

15.5 If there is more than one **guarantor**, this guarantee binds them separately, together and in any combination.

15.6 Each of the events referred to in clauses 7.1.5 and 7.1.6 is deemed to be a breach of an essential term of this lease.

16. DISPUTE RESOLUTION

16.1 Unless the **Act** applies, if the words "The mediation procedure applies to this lease" are included in item 21, the mediation procedure applies to this lease. In that event the **landlord** and the **tenant** must attempt to resolve any dispute by the mediation procedure, except disputes about -

16.1.1 unpaid **rent** and interest charged on it,

16.1.2 review of **rent**, and

- 16.1.3 a dispute to be resolved in another way prescribed by any other provision of this lease.
- 16.2 The mediation procedure is -
- 16.2.1 the **landlord** or **tenant** may start mediation by serving a mediation notice on the other.
- 16.2.2 the notice must state that a dispute has arisen and identify what the dispute is.
- 16.2.3 the **landlord** and **tenant** must jointly request appointment of a mediator. If they fail to agree on the appointment within 7 days of service of the mediation notice, either may apply to the President of the Law Institute of Victoria or the nominee of the President to appoint a mediator.
- 16.2.4 once the mediator has accepted the appointment the **landlord** and **tenant** and each **guarantor** must comply with the mediator's instructions.
- 16.2.5 if the dispute is not resolved within 30 days of the appointment of the mediator, or any other period agreed by the **landlord** and **tenant** in writing, the mediation ceases.
- 16.3 The mediator may fix the charges for the mediation which must be paid equally by the **landlord** and **tenant**.
- 16.4 If the dispute is settled, the **landlord** and **tenant** and each **guarantor** must sign the terms of agreement and the signed terms are binding.
- 16.5 The mediation is confidential and -
- 16.5.1 statements made by the mediator or the parties, and
- 16.5.2 discussions between the participants to the mediation, before after or during the mediation, cannot be used in any legal proceedings.
- 16.6 It must be a term of the engagement of the mediator that the **landlord** and **tenant** and each **guarantor** release the mediator from any court proceedings relating to this lease or the mediation.
- 16.7 The mediator is not bound by the rules of natural justice and may discuss the dispute with a participant in the absence of any others.
- 16.8 If the **Act** applies, so that a dispute must be referred to the Victorian Civil and Administrative Tribunal, the **landlord** and **tenant** agree that each may be represented by a legal practitioner or legal practitioners of its choice.

17. GST

- 17.1 Expressions used in this clause 17 and in the **GST Act** have the same meanings as when used in the **GST Act** unless the context requires otherwise.
- 17.2 Amounts specified as payable under or in respect of this lease are expressed exclusive of **GST**.
- 17.3 The recipient of a taxable supply made under or in respect of this lease must pay to the supplier, at the time payment for the supply is due, the **GST** payable in respect of the supply. This obligation extends to supply consisting of entry into this lease.
- 17.4 An amount payable by the **tenant** in respect of a creditable acquisition by the **landlord** from a third party must not exceed the sum of the value of the **landlord's** acquisition and the additional amount payable by the **tenant** under clause 17.3 on account of the **landlord's** liability for **GST**.
- 17.5 A recipient of supply is not obliged, under clause 17.3, to pay the **GST** on a taxable supply to it under this lease, until given a valid tax invoice for it.

18. CONSUMER PRICE INDEX

- 18.1 On a **CPI review date**, the **rent** is adjusted by reference to the **Consumer Price Index** using the following formula -

$$AR = R \times \frac{CPIB}{CPIA}$$

Where: "AR" means adjusted **rent**,

"R" means **rent** before adjustment,

"CPIB" means the **Consumer Price Index** number for the quarter immediately preceding the **CPI review date**, and

"CPIA" means the **Consumer Price Index** number for the quarter immediately preceding the most recent earlier **review date** or, where there is no earlier **review date**, the quarter immediately preceding the start of the **term**.

- 18.2 If CPIB is not published until after the **CPI review date**, the adjustment is made when it is published but the adjustment takes effect from the relevant **CPI review date**. In the meantime, the **tenant** must continue to pay the **rent** at the old rate and, when the adjustment is made, the **tenant** must immediately pay any deficiency or the **landlord** must immediately repay the excess.
- 18.3 If the base of the **Consumer Price Index** is changed between the two comparison dates an appropriate compensating adjustment must be made so that a common base is used.
- 18.4 Unless the **Act** applies and requires otherwise, if the **Consumer Price Index** is discontinued or suspended, then the calculation is to be made using whatever index is substituted for it. If no other index is substituted for it, the calculation is to be made using the index or calculation which the President of the Australian Property Institute, Victorian Division (acting as an expert and not as an arbitrator), determines is appropriate in the circumstances. This determination is binding.
- 18.5 Unless the **Act** applies, the adjustment is not made if it would result in a decrease in the **rent** payable.

19. IF PREMISES ONLY PART OF THE LETTABLE AREA OF THE BUILDING

- 19.1 If the **premises** are only a part of the **lettable area** of the **building**, the provisions of this clause apply.
- 19.2 The **landlord** -
- 19.2.1 may adopt whatever name it chooses for the **building** and change the name from time to time, and
 - 19.2.2 reserves all proprietary rights to the name of the **building** and any logo adopted for the **building**.
- 19.3 The **landlord** reserves for itself the use of all external surfaces of the **building** and areas outside the **building**.
- 19.4 The **building**, **common areas** and **landlord's installations** remain under the absolute control of the **landlord** which may manage them and regulate their use as it considers appropriate. In particular the **landlord** has the right -
- 19.4.1 to close off the **common areas** as often as the **landlord** reasonably considers appropriate to prevent rights of way or user arising in favour of the public or third parties,
 - 19.4.2 to exclude persons whose presence the **landlord** considers undesirable,
 - 19.4.3 to grant easements over any parts of the **land** which do not materially and adversely affect the **tenant's** use,
 - 19.4.4 to install, repair and replace, as necessary, the infrastructure necessary or desirable for the provision of services to the various parts of the **building**, and
 - 19.4.5 to repair, renovate, alter or extend the **building** but, in doing so, the **landlord** must not cause more inconvenience to the **tenant** than is reasonable in the circumstances.
- If the **Act** applies, these rights may only be exercised in a manner consistent with the **Act**.
- 19.5 The **tenant** must not obstruct the **common areas** or use them for any purpose other than the purposes for which they were intended.
- 19.6 The **tenant** must comply with the **building rules**. The **landlord** may change the **building rules** from time to time and the **tenant** will be bound by a change when it receives written notice of it. The **landlord** must not adopt a **building rule** or change the **building rules** in a way that is inconsistent with this lease. To the extent that a **building rule** is inconsistent with this lease, the lease prevails.

20. PERSONAL PROPERTY SECURITIES ACT

- 20.1 Expressions used in this clause that are defined in the **PPSA** have the meanings given to them in the **PPSA**.
- 20.2 The **landlord** may, at any time, register a financing statement for any security interest arising out of or evidence by this lease over any or all of -
- 20.2.1 the **landlord's installations**,
 - 20.2.2 any security deposit provided by the **tenant**, and
 - 20.2.3 **tenant's installations** and other **tenant's** property left on the **premises** after the end of the lease,
- that are personal property and must identify the property affected by the financing statement in the free text field of the statement.
- 20.3 When this lease -
- 20.3.1 ends and the **tenant** has vacated the premises and performed all of its obligations under it, or

20.3.2 is transferred,

the **landlord** must register a financing change statement with respect to any security interest for which the **landlord** has registered a financing statement other than those to which sub-clause 20.2.3 relates.

20.4 The **tenant** must sign any documents and do anything necessary to enable the **landlord** to register the statements referred to in the preceding sub-clause and to enforce its rights and perform its obligations under this clause and the **PPSA**. In particular, if the **tenant** is a natural person, the **tenant** must provide the **landlord** with the **tenant's** date of birth and a certified copy of a Victorian driver's licence (or other evidence acceptable to the **landlord**) to confirm the **tenant's** date of birth. The **landlord** must keep the **tenant's** date of birth and any evidence provided to confirm it secure and confidential.

20.5 The **tenant** must not register, or permit to be registered, a financing statement in favour of any person other than the **landlord**, for any security deposit provided by the **tenant** or any of the **landlord's** installations.

20.6 The **tenant** must pay the **landlord's** reasonable expenses and legal costs in respect of anything done or attempted by the **landlord** in the exercise of its rights or performance of its obligations under this clause or the **PPSA**, except the **landlord's** costs of registering a financing statement under sub-clause 20.2 which are to be borne by the **landlord**.

20.7 In accordance with section 275(6)(a) of the **PPSA**, the parties agree that neither of them will disclose information of the kind mentioned in subsection 275(1).

20.8 Subject to any requirement to the contrary in the **PPSA**, notices under this clause or the **PPSA** may be served in accordance with clause 14 of this lease.

21. ADDITIONAL PROVISIONS

Any additional provisions set out in **item 22** -

21.1 bind the parties, and

21.2 if inconsistent with any other provisions of this lease, override them.

22. LANDLORD WARRANTY

The **landlord** warrants that clauses 1 to 21 appearing in this lease are identical to clauses 1 to 21 of the copyright Law Institute of Victoria Lease of Real Estate August 2014 Revision and that any modifications to them are set out as additional provisions in **item 22**.

Schedule

Important Notice To The Person Completing This Schedule

This lease is in a standard form. You may need to make changes to record the agreement of the landlord, tenant and any guarantor. You should carefully check the whole document and make appropriate deletions, alterations and/or additions so it agrees with the instructions you have received. You should note the warranty in clause 21 and record any deletions, alterations and/or additions to the standard lease conditions as additional provisions in **item 22** and **not** in the lease conditions.

Item 1
[1.1]

Landlord:

Alan D'Andrea (as trustee for) D'Andrea Family Trust (ABN 20 525 962 615) of 15A Gundrys Road Bellbrae, Victoria. 3228

Item 2
[1.1]

Tenant:

Tiny Village Group Pty Ltd ABN 98 601 615 534 trading as Tiny Village Group trading as Tiny Village

Item 3
[1.1]

Guarantor:

Alan D'Andrea

Item 4
[1.1]

(a) Premises:

The buildings on the 4 titles that form the township zoned site (approx 14 acres – 42,000 sqm) that consist of licensed pub, café with Level 2 Food License, bistro, prescribed accommodation, licensed camping and registered caravan park as shown in **Schedule A** (including all fixtures, fittings, plant and equipment).

(b) Land: Located at 53-81 Great Ocean Road Lavers Hill 3238

Lot 1 Volume 10261 Folio 901,

Lot 2 Volume 10261 Folio 902,

Lot 3 Volume 10261 Folio 903,

Lot 4 Volume 10261 Folio 904

Item 5

Landlord's installations:

All buildings, landscaping, fittings and fixtures, generators,

Item 6
[1.1]

Rent:

\$60,000 (sixty thousand dollars) per annum and payable by equal monthly instalments on the first day of each month.

Note: There is no need to refer to GST if the rent is expressed as a GST exclusive sum – see clause 17; If the rent is expressed as a GST inclusive sum, an additional provision will be needed to modify the operation of clause 17.

Item 7
[1.1]

Tenant's installations:

Item 8
[1.1]

Term of the lease:

10 years starting on 1 December 2020

Item 9
[2.1.1]

How rent is to be paid:

By electronic transfer to the bank account nominated by the landlord



Item 10
[1.1,
2.1.2,
2.1.5 &
5.4]

Building outgoings which the tenant must pay or reimburse:

Premises consist of the entire lettable area of the building

100% of all building outgoings other than municipal rates, land tax and water rates.

Item 11
[1.1 &
6.2]

Risks which the insurance policies must cover: *

- Fire
- Flood
- Lightning
- Storm

*** Delete risks not required to be covered and add any other risks required to be covered**

Item 12
[1.1 &
2.3.1]

Amount of public risk insurance cover:

\$10 million or other amount reasonably specified from time to time by the **landlord**.

Item 13
[1.1]

Period of loss of rent and outgoings insurance:

18 months.

Item 14
[2.1.7]

Interest rate on overdue money:

5% per annum more than the rate from time to time fixed by the *Penalty Interest Rates Act 1983 (Vic)*.

Item 15
[2.2.1]

Permitted use:

Any permitted uses allowed under sites current and any additional Planning Permits and Certificates of compliance that include:

- Pub/bar (80 Patrons)
- Café
- Bistro
- Caravan Park
- Level 1 Commercial Food Certificate
- Prescribed accommodation
- Liquor License and fuel.

[1.14]

Application of Act:

The **Act** does apply

Item 16
[2.1.1,
11, 18]

Review date(s):

Term

(a) *Market review date(s):*

not applicable

(b) *CPI review date(s):*

not applicable

(c) *Fixed review date(s) and percentage or fixed amount increases:*
4% per annum

Further term(s)

(a) *Market review date(s):*
not applicable

(b) *CPI review date(s):*
not applicable

(c) *Fixed review date(s) and percentage or fixed amount increases:*
3% per annum

Item 17
[2.1.1,
11, 18]

Who may initiate reviews:

Market review: Not applicable

CPI review: Not applicable

Fixed review: Review is automatic

Item 18
[12]

Further term(s):

5 further terms of 10 years each.

Item 19
[12]

Earliest and latest dates for exercising option for renewal:

Earliest date: 15th October 2029

Latest date: 30 December 2029

Item 20
[13]

Security deposit:

At all times an amount equivalent to one month's rent. (unless waived by landlord).

Item 21
[16.1]

The mediation procedure applies to this lease

Item 22
[20]

Additional provisions:

Q

EXECUTED AS A DEED ON:

Date: 19 / November / 2020

EXECUTION & ATTESTATION LANDLORD

Executed by Alan D'Andrea (as trustee for) D'Andrea Family Trust (ABN 20 525 962 615)

in accordance with section 127 of the Corporations Act 2001(Cth)

Director

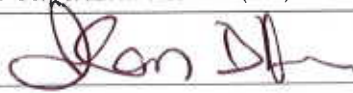
Print Name

Print usual address

*Director/*Secretary
[*Delete one]

Print Name

Print usual address



ALAN D'ANDREA

15A GUNDRYS ROAD BELBRARE 3228

EXECUTION & ATTESTATION TENANT

Executed by Tiny Village Group Pty Ltd ABN 98 601 615 534 trading as Tiny Village Group

in accordance with section 127 of the Corporations Act 2001(Cth)

Director

Print Name

Print usual address

*Director/*Secretary
[*Delete one]

Print Name

Print usual address



ALAN D'ANDREA

15A GUNDRYS ROAD BELBRARE 3228



ALAN D'ANDREA

15A GUNDRYS ROAD BELBRARE

EXECUTION & ATTESTATION GUARANTOR

Signed, sealed and delivered by the said Alan D'Andrea
in the presence of:



Witness

Print name

Print usual address



LEANNE POCKOCK

15A GUNDRYS ROAD BELBRARE 3228

Schedule A – 53-81 Great Ocean Road Lavers Hill Victoria 3238



Lease of Real Estate

[Do not attach to lease – see notes below]



Notification of dates before and after which option cannot be exercised

(Retail Leases Act 2003 (Vic) s28(1))

TO:

PREMISES:

LEASE DATED: / /

THE LANDLORD notifies you that the option to renew this lease cannot be exercised before / / (insert date)
or after / / (insert date).

DATED: / /

.....
Landlord

ACKNOWLEDGEMENT

The tenant acknowledges having received this notification on / / (insert date received)

ACKNOWLEDGEMENT DATED: / /

.....
Tenant

NOTES:

1. This form is only appropriate where the tenant has an option for renewal.
2. This form of notification should **not** be attached to the lease.
3. If the lease contains an option for renewal the notification must be effected at least 6 months but not more than 12 months before the date after which the option is no longer exercisable. Refer to *Xiao v Perpetual Trustee Company Ltd and Anor* [2008] VSC 412 in relation to the need to ensure that the notification actually comes to the notice of the tenant not less than 6 months before the date specified as the date after which the option cannot be exercised.
4. If the notice is given late, the dates specified must take account of section 28(2).
5. If the tenant does not have an option for renewal the landlord must give to the tenant, not more than 12 nor less than 6 months before the lease ends, notice in accordance with section 64(2) offering renewal or informing the tenant that the landlord does not propose to offer a renewal.

Lease of Real Estate

[Do not attach to lease – see notes below]



Notice of landlord's intention to offer a renewal of lease

(Retail Leases Act 2003 (Vic) s64(2)(a))

TO:

PREMISES:

LEASE DATED: / /

TAKE NOTICE that you are offered a renewal of the lease on the terms set out in this notice.

Terms of proposed lease

Lease term: Years

Commencing rent: \$ Per annum

and otherwise on the same terms as the present lease

This offer is incapable of revocation for 60 days after it is made except with your consent. If you wish to accept this offer you must do so in writing within 60 days after the date on which the offer is made.

DATED: / /

.....
Landlord

NOTES:

1. This form is **not** appropriate where the tenant has an option for renewal.
2. This form of notice should **not** be attached to the lease.
3. If the tenant does not have an option for renewal the landlord must give to the tenant, not more than 12 nor less than 6 months before the lease ends, notice in accordance with section 64(2) offering renewal or informing the tenant that the landlord does not propose to offer a renewal.
4. This form should only be used if the landlord intends to offer renewal.
5. Note the requirement of section 26(1) to provide a disclosure statement within 14 days after the date on which the parties agree to renew.

Lease of Real Estate

[Do not attach to lease – see notes below]



Notice of landlord's intention not to offer a renewal of lease

(Retail Leases Act 2003 (Vic) s64(2)(b))

TO:
PREMISES:
LEASE DATED: / /
TAKE NOTICE that the landlord of the premises does not propose to offer you a renewal of the lease. The term of the lease will end on / / (insert date)
DATED: / / Landlord

NOTES:

1. This form is **not** appropriate where the tenant has an option for renewal.
2. This form of notice should **not** be attached to the lease.
3. If the tenant does not have an option for renewal the landlord must give to the tenant, not more than 12 nor less than 6 months before the lease ends, notice in accordance with section 64(2) offering renewal or informing the tenant that the landlord does not propose to offer a renewal.
4. This form should only be used if the landlord does not intend to offer a renewal.
5. If the notice is given late, the date specified as the date the lease will end must take account of section 64(4)(b).