

# LEASE OF REAL ESTATE

## PREMISES AT

Shop 5 & 6 , 232 Ridge Road, Olinda 3788

---



**COPYRIGHT  
Law Institute of Victoria  
May 2009 Revision**

### **- Important Notice 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 21 and record any alterations to the lease conditions in schedule item 22 and **not** in the lease conditions.

## 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:**

**Douglas Stanley Greenall & Janette Bett Greenall**  
of 15 Observatory Road, Mt Dandenong, Victoria, 3767

**Item 2**  
[1.1]

**Tenant:**

**Dandenong Ranges Community Finance Ltd (ABN 11 068 049 178)**  
of 30-32 Main Street, Upwey, Victoria

**Item 3**  
[1.1]

**Guarantor:**

Nil

**Item 4**  
[1.1]

**(a) Premises:**

Shops 5 and 6, 232 Ridge Road, Olinda

**(b) Land:**

Vol: 08093 Folio: 944

**Item 5**  
[1.1]

**Landlord's installations:**

All fixtures, fittings, plant and equipment belonging to the Landlord now or hereafter in the Premises subject to the Additional Provisions set out below

**Item 6**  
[1.1]

**Rent:**

\$18,000 per annum or (\$1,500 per calendar month).

**Item 7**  
[1.1]

**Tenant's installations:**

All fixtures and fittings brought onto the Premises by the Tenant and belonging to the Tenant subject to the Additional Provisions

**Item 8**  
[1.1]

**Term of the lease:**

For a period commencing on the 19th day of October 2009 and expiring on the 18th day of October 2014.

**Item 9**  
[2.1.1]

**How rent is to be paid:**

Calendar monthly in advance.

**Item 10**  
[1.1, 2.1.2,  
2.1.5 & 5.4]

**Building outgoings which the tenant must pay or reimburse:**

The **Tenant's** proportion of **building outgoings** -

- (a) in relation to **building outgoings** that benefit all of the premises in the **building**: the proportion that the **lettable area** of the **premises** bears to the total **lettable area** of the **building**, which at present is 30%;
- (b) in relation to **building outgoings** that benefit the **premises** and other premises but not all of the premises in the **building**: the proportion that the **lettable area** of the **premises** bears to the total **lettable area** of all premises (including the **premises**) that benefit from the outgoing;
- (c) in relation to **building outgoings** that benefit only the **premises**: 100%

**Item 11**  
[1.1 & 6.2]

**Risks which the insurance policies must cover: \***

- . Fire
- . Flood
- . Lightning
- . Storm and tempest
- . Explosion
- . Riots and civil commotion
- . Strikes
- . Malicious damage
- . Earthquake
- . Impact by vehicles
- . Impact by aircraft and articles dropped from them
- . Internal flood water

and such other risks as the **landlord** reasonably requires from time to time.

**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:**

Nil.

**Item 14**  
[2.1.7]

**Interest rate on overdue money:**

2% 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:**

Banking and Financial Services

[1.13]

**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): Annually on each anniversary of the Commencement Date*
- (c) *Fixed review date(s) and percentage or fixed amount increases: Not applicable*

**Further term(s)**

- (a) *Market review date(s): Not applicable*
- (b) *CPI review date(s): Annually on each anniversary of the commencement date.*
- (c) *Fixed review date(s) and percentage or fixed amount increases: Not Applicable.*

**Item 17**  
[2.1.1, 11, 18]

**Who may initiate reviews:**

*Review is automatic.*

**Item 18**  
[12]

**Further term(s):**

Two further terms of 5 years each

**Item 19**  
[12]

**Latest date for exercising option for renewal:**

Not more than 6 months and not less than 3 months before expiration of the term.

**Item 20**  
[13]

**Security deposit:**

Nil

**Item 21**  
[16.1]

**The mediation procedure applies to this lease**

**Item 22**  
[20]

**Additional provisions:**

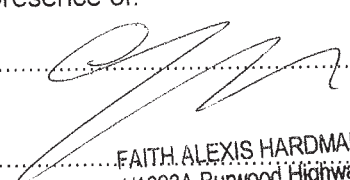
See attached.

EXECUTED AS A DEED ON

DATE: 1 / 12 / 2009

SIGNED SEALED and DELIVERED by the said  
DOUGLAS STANLEY GREENALL in the  
presence of:

)   
) .....  
)


.....  
  
.....  
FAITH ALEXIS HARDMAN  
1/1693A Burwood Highway, Belgrave Vic 3160.....  
An Australian Legal Practitioner  
under the Legal Profession Act 2004  
.....

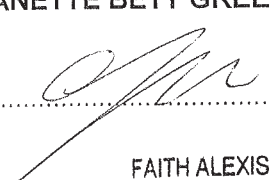
Witness

Print name

Print usual address

SIGNED SEALED and DELIVERED by the said  
JANETTE BETT GREENALL in the presence of:

)   
) .....  
)

.....  
  
.....  
FAITH ALEXIS HARDMAN  
1/1693A Burwood Highway, Belgrave Vic 3160..  
An Australian Legal Practitioner  
under the Legal Profession Act 2004  
.....

Witness

Print name

Print usual address

EXECUTED by DANDENONG RANGES  
COMMUNITY FINANCE LTD ACN 084 480 035  
in accordance with section 127 of the  
Corporations Act 2001 (Cth)

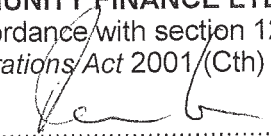
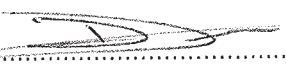
)  
)  
)  
)

Director

Print name

Print usual address

\*Director/\*Secretary

.....  
  
.....  
PETER MARKE  
.....  
2 RICEY ROAD UPWAY  
.....  
  
.....  
DEVENDRA KANTIL DESAI  
.....

Print name

1 Mulgrave St Ashwood Vic 3147 Print usual address

\*Delete one alternative

## MORTGAGEE CONSENT

BENDIGO BANK LTD, the proprietor of Mortgage Number AB914748P consents to this lease.

EXECUTED by **BENDIGO AND ADELAIDE**  
**BANK LTD ACN 068 049 178** in accordance  
with section 127 of the *Corporations Act 2001*  
(Cth)

*Jennifer Dawson*  
.....  
**JENNIFER LYNN DAWSON**

)  
)  
)  
)  
Director

Print name

*The Bendigo Centre, Bendigo*  
.....  
*David Andrew Oatway*  
.....  
**DAVID ANDREW OATAWAY**

Print usual address

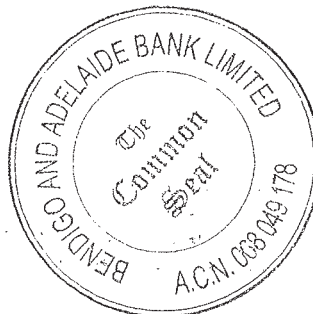
\*Director/\*Secretary

Print name

*The Bendigo Centre, Bendigo*  
.....

Print usual address

\*Delete one alternative



**Landlord:** Stanley & Janette Greenall of 15 Observatory Road, Mt Dandenong  
Victoria, 3767  
**Tenant:** Dandenong Ranges Community Finance Ltd (ABN 28 084 480 035)  
**Premises:** Shops 5 and 6, 232 Ridge Road, Olinda

- 1.1 Subject to the following sub-clauses, the date that the Landlord's works are complete shall be determined as follows:

When, in the opinion of the Landlord, the Landlord's works are complete, the Landlord shall give to the Tenant notice thereof in writing (the "completion notice"), and:

- a) If, upon receipt of the completion notice, the Tenant is satisfied that the Landlord's Works have been completed, the Tenant shall within 14 days notify the Landlord in writing that it agrees that the Landlord's works are complete;
- b) If, upon receipt of the completion notice, the Tenant is not satisfied that the Landlord's works have been completed, it shall within 14 days give the Landlord notice in writing of the matters and things to be done before the works can be considered to be complete, and the Landlord shall then complete the items set out in the notice and shall then give to the Tenant notice in writing that it has complied with the notice, and upon such last mentioned completion notice, or any subsequent similar notice, being given by the Landlord the like procedure shall be followed as is prescribed in the case of the initial completion notice;
- c) If the Tenant does not give a notice under sub-clause (a) & (b) hereof, the Landlord's works shall be deemed to have been completed on the date of the completion notice or, if more than one, the last of the completion notices given by the Landlord to the Tenant;

- 1.2 Within 6 month after the Tenant commences business in the Leased Premises, it may notify the Landlord in writing of any defects arising out of or in connection with the Landlord's works and the Landlord shall promptly attend to the works required to rectify the defects.

#### **The Tenant's Works:**

##### **Automatic Teller Machine, Security Safe:**

- 2.1 As part of the Tenant's Works the Landlord acknowledges that an Automatic Teller Machine and a Security Safe and/or strong-room may be installed on the Premises. The Landlord acknowledges that the Tenant may have access to the premises 24 hours per day to service the Automatic Teller Machine.

##### **Ownership & Removal**

- 2.2 Ownership: Unless otherwise provided in these Additional Provisions or agreed in writing to the contrary, all fixtures, fittings and improvements installed or undertaken by the Tenant or undertaken by the Landlord at the Tenant's expense shall remain the property of the Tenant.

2.3 Must Not Remove: The Tenant shall not remove the following items at any time without the Landlord's prior written consent:

a) Any electrical work undertaken by the Tenant.

2.4 Must Remove: On the expiration of this Lease the Tenant shall remove the following items and make good any damage caused by the removal:

a) Automatic Teller Machine and Security Safe and/or strong room; and

b) All signs;

2.5 May Remove: On the expiration of this Lease the Tenant may remove the following items, in which event it shall make good any damage caused by the removal:

a) All fit-out items;

b) Security system;

c) Fire guard and fire security systems;

d) Floor coverings;

e) Blinds and window furnishings;

And any items not removed within 30 days of the Tenant vacating the premises shall become the property of the Landlord.

#### **Painting:**

3. The Tenant shall be permitted to paint the Premises (both internally and externally) in the current Bendigo Bank Ltd corporate colouring. If there is a change in the Bendigo and Adelaide Bank Ltd corporate colouring during the term of the Lease then the Tenant shall be permitted to repaint the premises.

#### **Signage:**

4. The Tenant shall be permitted to erect signs on the Premises including the façade and fascia as required by Bendigo and Adelaide Bank Ltd during the term of the lease. The Tenant shall remove the signs on vacating the Premises and it shall make good any damage caused by the removal.

#### **Telecommunications Tower:**

5.1 The Landlord shall not install a telecommunications tower or other facility or structure on the roof of the premises without the Tenant's prior written approval.

5.2 With the Landlord's consent, the Tenant shall have the exclusive right to install on the roof of the premises Telecommunications facilities for transmitting data. The Landlord's consent shall not be unreasonably withheld if the Tenant supplies to the Landlord the full details of proposed facilities which will be installed in a proper and workmanlike manner, so as not to cause any detriment to the premises and an undertaking is provided to the Landlord that the facilities will be removed on the expiration of the term of the Lease at the Tenant's cost with any damage caused to the premises promptly made good by the Tenant.

**Deed of Entry:**

6. The Landlord shall execute the Deed of Entry in the form that has been provided by the Tenant and further the Landlord shall arrange for any mortgagees who have an interest in the Premises to execute the Deed of Entry.

**Asbestos and other Hazardous Materials:**

7. If asbestos, toxic materials or substances are located or identified on the premises, the Landlord shall be responsible for the cost of obtaining a hazardous building materials report by a registered occupational hygiene and environmental consultant or any other similarly qualified person to determine the extent of the presence of such materials and the Landlord shall pay all costs associated with the removal of such substances from the premises. The Landlord shall attend to the removal of such substances from the premises if the Tenant considers that their presence constitutes a risk to the health and safety of its customers or any other persons who it requires to have access to the premises.

**Tenant's Right of First Refusal:**

- 8.1 If the Tenant throughout the term of the lease:
  - a) pays rent regularly; and
  - b) does not breach and does not fail to comply with the provisions of this Lease in a way which is serious or persistent or both,  
then during the term of this Lease the Landlord must not sell or agreed to sell or offer to sell the Premises to any person other than the Tenant unless:
    - c) the Landlord has first served on the Tenant a written offer which complies with following sub clause (2); and
    - d) the Tenant has not accepted the offer within 14 days after service.
- 8.2 An offer under the preceding sub-clause (1):
  - a) must be in writing;
  - b) must state clearly that the Landlord offers to sell the leased Premises to the Tenant in accordance with this Tenant's Right of First Refusal clause;
  - c) must state a purchase price at which the Premises are actually sold or agreed to be sold or offered for sale;
  - d) must state or refer to terms which are not less favourable to the Tenant that the terms on which the premises are actually sold or agreed to be sold or offered for sale; and
  - e) must state that the Tenant must accept the offer within 14 days after service.
- 8.3 Notwithstanding the preceding sub-clause, the Landlord may, without first serving an offer on the Tenant:

- a) sell or agree to sell or offer to sell the premises by auction, but in this case the Landlord must give the Tenant at least 21 day's notice in writing of the auction; or
- b) agree to sell or offer to sell the premises on the condition that the Landlord first serves an offer on the tenant and the tenant rejects or does not accept the offer within 14 days after service.

8.4 The benefit of this clause shall not be assigned with an assignment of the lease and may not be assigned by the Tenant.

## **9. Communications "Lead in" Cable**

9.1 The Landlord shall provide if required by the Tenant a suitably sized (ten pair minimum) communications "lead in" cable which is to be terminated at an industry's standard communications Building Distributor (commonly known as a distribution main frame or MDF prior to the Tenant's works being undertaken.

### **The Tenant's Work's:**

All work required by Bendigo and Adelaide Bank Ltd to enable the premises to be suitable to conduct a retail banking business, including but not limited to the following:

1. All fit out items - including but not limited to the counter and associated work, furniture, bank vault, cupboards, compactuses, storage or office partitions.
2. Security systems, including electromagnetic field protection, anti ballistic security screens and associated works.
3. All electrical work beyond the power box including lighting and telephone cabling for computers and associated works.
4. Fire guard and fire security systems, including fire extinguishers.
5. Paintwork and finishings including interior and exterior finishes and signage.
6. Floor finishes and floor coverings.
7. Blinds and window furnishings.
8. Automatic Teller Machine, security safe and/or strongroom and associated works.

**LEASE OF REAL ESTATE**  
**(WITH GUARANTEE & INDEMNITY)**  
*(Commercial Property)*

**INDEX**

|            |  |           |
|------------|--|-----------|
| <b>1.</b>  | <b>DEFINITIONS AND INTERPRETATION</b>  | <b>3</b>  |
| <b>2.</b>  | <b>TENANT'S PAYMENT, USE AND INSURANCE OBLIGATIONS</b>                       | <b>5</b>  |
|            | 2.1 Payment and use obligations  |           |
|            | 2.2 Negative use obligations   |           |
|            | 2.3 Tenant's insurance   |           |
| <b>3.</b>  | <b>REPAIRS, MAINTENANCE, FIRE PREVENTION AND REQUIREMENTS OF AUTHORITIES</b> | <b>7</b>  |
|            | 3.1 Tenant's general repair obligations                                      |           |
|            | 3.2 Tenant's specific repair obligations                                     |           |
|            | 3.3 Exceptions to tenant's obligations                                       |           |
| <b>4.</b>  | <b>LEASE TRANSFERS AND SUBLETTING</b>  | <b>8</b>  |
|            | 4.1 No transfer or subletting  |           |
|            | 4.2 Landlord's consent   |           |
|            | 4.3 Request for consent  |           |
|            | 4.4 Deemed consent   |           |
|            | 4.5 Execution of documentation   |           |
|            | 4.6 Payment of landlord's expenses   |           |
|            | 4.7 No licence or sharing arrangements                                       |           |
|            | 4.8 Obligations of transferor after transfer                                 |           |
| <b>5.</b>  | <b>GENERAL AGREEMENTS BETWEEN LANDLORD AND TENANT</b>                        | <b>9</b>  |
|            | 5.1 Yield up at end of term  |           |
|            | 5.2 Indemnity by tenant  |           |
|            | 5.3 Release by tenant  |           |
|            | 5.4 Building outgoings   |           |
|            | 5.5 Transfer of premises by landlord   |           |
| <b>6.</b>  | <b>LANDLORD'S OBLIGATIONS</b>  | <b>10</b> |
|            | 6.1 Quiet possession   |           |
|            | 6.2 Landlord's insurance   |           |
|            | 6.3 Mortgagee's consent  |           |
|            | 6.4 Landlord's repair obligations  |           |
| <b>7.</b>  | <b>EVENTS OF DEFAULT AND LANDLORD'S RIGHTS</b>                               | <b>10</b> |
|            | 7.1 Termination by landlord for default                                      |           |
|            | 7.2 Damages  |           |
|            | 7.3 Section 146 Property Law Act 1958  |           |
|            | 7.4 Notice before termination in case of rent                                |           |
|            | 7.5 Essential terms  |           |
|            | 7.6 Notice before termination for repudiation                                |           |
|            | 7.7 Effect of non-enforcement  |           |
| <b>8.</b>  | <b>DESTRUCTION OR DAMAGE</b>   | <b>11</b> |
|            | 8.1 Abatement in case of damage  |           |
|            | 8.2 Reinstatement where premises not substantially destroyed                 |           |
|            | 8.3 Substantial destruction  |           |
|            | 8.4 Insurance cover denied due to tenant act or omission                     |           |
|            | 8.5 Resolution of disputes   |           |
| <b>9.</b>  | <b>CONSENTS AND WARRANTIES BY THE PARTIES</b>                                | <b>11</b> |
|            | 9.1 Consents and approvals   |           |
|            | 9.2 Whole agreement  |           |
| <b>10.</b> | <b>OVERHOLDING AND ABANDONMENT OF THE PREMISES</b>                           | <b>12</b> |
|            | 10.1 Holding over  |           |
|            | 10.2 Certain conduct not waiver  |           |

|   |           |
|---|-----------|
| <b>11. RENT REVIEWS TO MARKET</b>                                     | <b>12</b> |
| 11.1 Market review procedure  |           |
| 11.2 Determination binding  |           |
| 11.3 Valuer's fee   |           |
| 11.4 Rent pending determination                                       |           |
| 11.5 Delay in market review   |           |
| <b>12. FURTHER TERM(S)</b>  | <b>13</b> |
| 12.1 Exercise of option to renew                                      |           |
| 12.2 Terms of renewed lease   |           |
| 12.3 Directors' guarantees  |           |
| <b>13. SECURITY DEPOSIT</b>   | <b>13</b> |
| 13.1 Payment of security deposit                                      |           |
| 13.2 Interest on security deposit                                     |           |
| 13.3 Use of security deposit  |           |
| 13.4 Refund of unused security deposit                                |           |
| 13.5 Bank guarantee as security deposit                               |           |
| 13.6 Replacement guarantee on change of landlord                      |           |
| <b>14. NOTICES</b>  | <b>14</b> |
| 14.1 Service of notices   |           |
| 14.2 Time notices served  |           |
| 14.3 Notices received after 5.00pm                                    |           |
| <b>15. OBLIGATIONS OF GUARANTOR(S) UNDER GUARANTEE AND INDEMNITY</b>  | <b>14</b> |
| 15.1 Guarantee and indemnity  |           |
| 15.2 Guarantee and indemnity not affected by certain events           |           |
| 15.3 Insolvency of tenant   |           |
| 15.4 Unenforceability of tenant's obligations                         |           |
| <b>16. DISPUTE RESOLUTION</b>   | <b>15</b> |
| 16.1 Provision for mediation  |           |
| 16.2 Mediation procedure  |           |
| 16.3 Mediator's fees  |           |
| 16.4 Terms of settlement  |           |
| 16.5 Mediation confidential   |           |
| 16.6 Release of mediator  |           |
| 16.7 Mediator not bound by natural justice                            |           |
| 16.8 VCAT proceedings   |           |
| <b>17. GST</b>  | <b>15</b> |
| 17.1 Terms used   |           |
| 17.2 Amounts GST exclusive  |           |
| 17.3 Recipient of supply to pay amount for GST                        |           |
| 17.4 Reimbursements   |           |
| 17.5 Tax invoice  |           |
| <b>18. CONSUMER PRICE INDEX</b>                                       | <b>15</b> |
| 18.1 CPI formula  |           |
| 18.2 Delay in publications of index                                   |           |
| 18.3 Change in CPI basis  |           |
| 18.4 CPI discontinued   |           |
| 18.5 No decrease unless Act applies                                   |           |
| <b>19. IF PREMISES ONLY PART OF THE LETTABLE AREA OF THE BUILDING</b> | <b>16</b> |
| 19.1 Application of clause  |           |
| 19.2 Naming rights and logos  |           |
| 19.3 External surfaces and outside areas                              |           |
| 19.4 Landlord reserves certain rights                                 |           |
| 19.5 No obstruction of common areas                                   |           |
| 19.6 Building rules   |           |
| <b>20. ADDITIONAL PROVISIONS</b>                                      | <b>16</b> |
| <b>21. LANDLORD WARRANTY</b>  | <b>16</b> |

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   |
|---------------------------|---|
| <b>accounting period</b>  | the period of 12 months ending 30 June or other period of 12 months adopted by the <b>landlord</b> in respect of this lease for recovery of <b>building outgoings</b> and includes any broken periods at the start and end of the <b>term</b>   |
| <b>Act</b>                | the <i>Retail Leases Act 2003</i> (Vic)   |
| <b>building</b>           | any building in which the <b>premises</b> are located, including the <b>landlord's installations</b>  |
| <b>building outgoings</b> | any of the following expenses incurred in respect of the <b>land</b> , the <b>building</b> , the <b>premises</b> or any premises in the <b>building</b> which include the <b>premises</b> - <ul style="list-style-type: none"> <li>(a) rates, levies and assessments imposed by any relevant authorities;</li> <li>(b) taxes including land tax (unless the <b>Act</b> applies), calculated on the basis that the <b>land</b> is the only land of the <b>landlord</b> liable to tax and is not subject to a trust but excluding income tax and capital gains tax;</li> <li>(c) the costs of maintaining and repairing the <b>building</b> and the <b>landlord's installations</b> (but excluding any amount recovered in respect of that maintenance or repair by the <b>landlord</b> from its insurer);</li> <li>(d) premiums and charges for the following insurance policies taken out by the <b>landlord</b> -               <ul style="list-style-type: none"> <li>(i) damage to and destruction of the <b>premises</b> for their replacement value for the risks listed in <b>item 11</b>,</li> <li>(ii) removal of debris,</li> <li>(iii) breakdown of <b>landlord's installations</b>,</li> <li>(iv) breakage of glass,</li> <li>(v) public risk for any single event for the amount stated in <b>item 12</b> (if none is stated, \$10 million) or other amount reasonably specified from time to time by the <b>landlord</b>, and</li> <li>(vi) loss of rent and outgoings for the period stated in <b>item 13</b> or, if none is stated, 12 months,</li> </ul> </li> </ul> <p>and excesses paid or payable on claims,</p> <p>and, if the <b>premises</b> occupy only a part of the <b>lettable area</b> of the <b>building</b>, the following further items -</p> <ul style="list-style-type: none"> <li>(e) costs incurred in providing services to the <b>building</b> and the <b>land</b> including -               <ul style="list-style-type: none"> <li>(i) heating,</li> <li>(ii) cooling,</li> <li>(iii) air-conditioning,</li> </ul> </li> </ul> |

|                                 |  |
|---------------------------------|--|
|                                 | <ul style="list-style-type: none"> <li>(iv) cleaning,</li> <li>(v) pest control,</li> <li>(vi) waste collection,</li> <li>(vii) lighting,</li> <li>(viii) landscaping and garden maintenance,</li> <li>(ix) security, and</li> <li>(x) fire prevention, detection and control;</li> </ul>  |
|                                 | (f) accountancy and audit fees; and  |
|                                 | (g) costs of whatever description, reasonably incurred by the <b>landlord</b> in the administration, management or operation of the <b>building</b> and the <b>land</b> ,  |
|                                 | whether incurred by the <b>landlord</b> directly or as owners corporation levies, at cost to the <b>landlord</b> on the basis that an expense is deemed to have been paid at the time it fell due for payment but, if the <b>Act</b> applies, only to the extent permitted by the <b>Act</b> and, in any event, excluding capital expenditure  |
| <b>building rules</b>           | any rules adopted from time to time for the <b>building</b> , including the rules of any owners corporation affecting the <b>premises</b>  |
| <b>common areas</b>             | <p>areas in the <b>building</b> or on the <b>land</b> that are under the control of the <b>landlord</b> and are used or intended for use -</p> <ul style="list-style-type: none"> <li>(a) by the public; or</li> <li>(b) in common by tenants of premises in the <b>building</b> in relation to the carrying on of businesses on those premises,</li> </ul> <p>other than areas which are let or licensed, or intended to be let or licensed, other than on a casual basis</p> |
| <b>Consumer Price Index</b>     | the consumer price index published by the Australian Government Statistician under the heading All Groups, Melbourne   |
| <b>CPI review date</b>          | a date specified in <b>item 16(b)</b>  |
| <b>fixed review date</b>        | a date specified in <b>item 16(c)</b>  |
| <b>GST</b>                      | GST within the meaning of the <b>GST Act</b>   |
| <b>GST Act</b>                  | <i>A New Tax System (Goods and Services Tax) Act 1999 (Cth)</i>  |
| <b>guarantor</b>                | the person named in <b>item 3</b>  |
| <b>item</b>                     | an item in the schedule to this lease  |
| <b>land</b>                     | the parcel of land on which the <b>building</b> is erected and which is described in <b>item 4(b)</b>  |
| <b>landlord</b>                 | the person named in <b>item 1</b> , or any other person who will be entitled to possession of the <b>premises</b> when this lease ends   |
| <b>landlord's installations</b> | the installations of the <b>landlord</b> in the <b>premises</b> or the <b>building</b> or on the <b>land</b> and those installed by the <b>landlord</b> after the lease starts and including the installations listed in <b>item 5</b>   |
| <b>lettable area</b>            | <p>unless the <b>Act</b> applies and requires otherwise -</p> <ul style="list-style-type: none"> <li>(a) in relation to the <b>premises</b>, the area let; and</li> <li>(b) in relation to the <b>building</b>, the total area of the <b>building</b> that is let or licensed or intended to be let or licensed, other than on a casual basis.</li> </ul>  |

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**

**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 installations listed in **item 7** and those installed 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(1A) of the *Valuation of Land Act 1960* (Vic) and, if the **Act** applies, a specialist retail valuer.

- 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 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 deductions 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 appropriate proportion of the **building outgoings** in accordance with **item 10** and 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 -
- the negotiation, preparation, settling, execution and stamping (if applicable) of this lease,
  - change to this lease requested by the **tenant** whether or not the change occurs,
  - 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,
  - the transfer of this lease or subletting of the **premises** or proposed transfer or sub-letting whether or not the transfer or subletting occurs,
  - a request by the **tenant** for consent or approval, whether or not consent or approval is given,
  - any breach of this lease by the **tenant**, or
  - 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 clause 3.3.2, 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 clause 3.3.2, 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 -
- it to become void or voidable,
  - any claim on it being rejected, or
  - 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 to the **premises** without the **landlord's** written consent. Consent is entirely at the **landlord's** discretion.
- 2.2.12 install any fixtures or fittings, except those necessary for the **permitted use**, without the **landlord's** written consent.
- 2.2.13 bring onto the **premises** any object which by its nature or weight might cause damage to the **premises**, without the **landlord's** written consent.
- 2.2.14 except in an emergency, interfere with any of the services or equipment in the **premises** or in any property of which the **premises** form part.
- 2.3 The **tenant** must -
  - 2.3.1 take out and keep current an insurance cover 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**.
- 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 the 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 unless the **landlord** loses 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**.

#### 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. 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

- 4.3.3 (b) a copy of the proposed document of transfer or sublease, and 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
  - 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, 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 entirely 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 in relation to items to which Part IVA of the *Landlord and Tenant Act 1958* apply, the **landlord** will have the rights and powers conferred by Part IVA; and
  - 5.1.4 in relation to all other items of **tenant's installations** and **tenant's** property, they 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 and recover the costs of removal and making good as a liquidated debt payable on demand.
- 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 accidents occurring on the **premises** except to the extent that the accident is caused by the **landlord** or a person for whom the **landlord** is responsible.
- 5.4 In relation to **building outgoing**s, the parties agree -
  - 5.4.1 the **landlord** must pay the **building outgoing**s when they fall due for payment but may require the **tenant** to pay when due a **building outgoing** for which the **tenant** receives notice directly and to 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 (but if the **Act** applies, the **landlord** must) give the **tenant** an estimate of **building outgoing**s for the **accounting period**.

- 5.4.4 despite clause 5.4.1, the **tenant**, if the **landlord** requires it, must pay its share of the estimated **building outgoings** by equal monthly instalments during the **accounting period** on the days on which **rent** is payable (after allowing for **building outgoings** paid directly or separately reimbursed by the **tenant**).
- 5.4.5 if the **Act** applies, the **landlord** must make a statement of **building outgoings** available during each **accounting period** as required by the **Act**.
- 5.4.6 within three months after the end of an **accounting period**, the **landlord** must give the **tenant** a statement of the actual **building outgoings** for the **accounting period** (if the **Act** applies and requires that the statement be certified, the statement must be certified as required by the **Act**).
- 5.4.7 the **tenant** must pay the amount short paid or the **landlord** must repay the amount over paid for **building outgoings**, as the case may be, 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 an appropriate adjustment must be made in relation to a **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.

## 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 for 14 days after becoming 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 the Australian Stock 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*,
  - (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 The **landlord** must give the **tenant**, before terminating this lease under clause 7.1 for non-payment of rent, the same notice that it would be required to give under section 146(1) of the *Property Law Act 1958* (Vic) for a breach other than the non-payment of rent.
- 7.5 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, 2.2.13, 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.
- 7.6 Before terminating this lease for repudiation (including repudiation consisting of the non-payment of rent), the **landlord** must give the **tenant** written notice of the breach and a period of 14 days in which to remedy it 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.
- 7.7 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** cannot be used or accessed for the **permitted use** -
  - 8.1.1 a fair proportion of the **rent** and **building outgoings** is to be suspended until the **premises** are again wholly fit and accessible for the **permitted use**, and
  - 8.1.2 the suspended proportion of the **rent** and **building outgoings** must be proportionate to the nature and extent of the damage 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, either party 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 parties 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 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 the disclosure statement if there is one, contains the whole agreement of the parties. Neither party 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 either party 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 either party unless item 17 states otherwise but, if the **Act** applies, review is compulsory.
  - 11.1.2 a party may initiate a review by giving the other party a written notice stating the current market rent which it proposes as the **rent** for the review period. Unless the **Act** applies, if the party receiving the notice does not object in writing to the proposed rent within 14 days, it becomes the **rent** for the review period.
  - 11.1.3 If -
    - (a) the **Act** does not apply and the party receiving the notice serves an objection to the proposed rent within 14 days and the parties do not agree on the **rent** within 14 days after the objection is served, or
    - (b) the **Act** applies and the parties do not agree on what the **rent** is to be for the review period,
 the parties must appoint a **valuer** to determine the current market rent.  
If the **Act** does not apply and if the parties do not agree within 28 days after the objection is served on the name of the **valuer**, the **valuer** must be nominated by the President of the Australian Property Institute, Victorian Division, at the request of either party. If the **Act** applies, the **valuer** is to be appointed by agreement of the parties, 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 parties 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 parties 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 parties
    - (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 parties may immediately appoint a replacement **valuer** in accordance with sub-clause 11.1.3.
- 11.2 The **valuer's** determination binds both parties.
- 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, the difference may be recovered 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**. 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,
  - 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 requested the renewal in writing not more than 6 months nor less than 3 months before the end of the **term**. The latest date for exercising the option is stated in **item 19**.
- 12.2 The renewed lease -
  - 12.2.1 starts on the date after this lease ends,
  - 12.2.2 has a starting **rent** determined in accordance with clause 11, 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.
- 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 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 Where the security deposit is invested in an interest bearing deposit, 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 post,
  - 14.1.2 by facsimile, or
  - 14.1.3 by delivery
 to the party's last known address, or
  - 14.1.4 registered office, or
  - 14.1.5 if to the **tenant**, at the **premises**.
- 14.2 Posted notices will be taken to have been received 72 hours after posting unless proved otherwise.
- 14.3 Notices delivered or sent by facsimile after 5.00p.m. will be taken to have been received at 9.00a.m. on the next business day at the place where it is received.

#### 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 renewed 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 renewed term or terms 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.

## 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 parties 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 a party may start mediation by serving a mediation notice on the other party.
  - 16.2.2 the notice must state that a dispute has arisen and identify what the dispute is.
  - 16.2.3 the parties must jointly request appointment of a mediator. If the parties fail to agree on the appointment within 7 days of service of the mediation notice, either party 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 parties 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 parties in writing, the mediation ceases.
- 16.3 The mediator may fix the charges for the mediation which must be paid equally by the parties.
- 16.4 If the dispute is settled, all parties must sign the terms of agreement and these terms are binding on the parties.
- 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 parties 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 party in the absence of any other party.
- 16.8 If the **Act** applies, so that a dispute must be referred to the Victorian Civil and Administrative Tribunal, the parties 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**.
- 17.2 Amounts payable and consideration provided under or in respect of this lease (other than under clause 17.3) are **GST** exclusive.
- 17.3 The recipient of a taxable supply made under or in respect of this lease must pay to the supplier, at the time the consideration for the supply is due, the **GST** payable in respect of the supply. This obligation extends to supply consisting of a party's 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 party 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 the supply.

## 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 the shortfall or the **landlord** must immediately repay the excess, as the case may be.
- 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 pipes and conduits 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. ADDITIONAL PROVISIONS

Any additional provisions set out in item 22 -

- 20.1 bind the parties, and
- 20.2 if inconsistent with any other provisions of this lease, override them.

## 21. LANDLORD WARRANTY

The **landlord** warrants that clauses 1 to 20 appearing in this lease are identical to clauses 1 to 20 of the copyright Law Institute of Victoria Lease of Real Estate May 2009 Revision and that any modifications to them are set out as additional provisions in item 22.