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This document is prepared from a precedent intended solely for use by legal practitioners with the knowledge, skill and qualifications required to use the precedent to create a document suitable to meet the vendor's legal obligation to give certain statements and documents to a purchaser before the purchaser signs a contract to purchase the land. This document is current as at 1 July 2024.

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Section 32 Statement

The vendor makes this statement in respect of the land in accordance with section 32 of the *Sale of Land Act 1962*.

This statement must be signed by the vendor and given to the purchaser before the purchaser signs the contract. The vendor may sign by electronic signature.

The purchaser acknowledges being given this statement signed by the vendor with the attached documents before the purchaser signed any contract.

Land	139-141 MAIN STREET, BAIRNSDALE, 44A & 44B BAILEY STREET BAIRNSDALE 3875	
Vendor	THELMA MARGARET COMBEN	Date 9/10/2024
Vendor's signature	<i>Thelma Comben</i>	
Purchaser		Date / /
Purchaser's signature		
Purchaser		Date / /
Purchaser's signature		

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1. FINANCIAL MATTERS

1.1 Particulars of any Rates, Taxes, Charges or Other Similar Outgoings (and any interest on them)

are contained in the attached certificates.

1.2 Particulars of any Charge (whether registered or not) imposed by or under any Act to secure an amount due under that Act, including the amount owing under the charge

None to the Vendor's knowledge

1.3 Terms Contract

This section 1.3 only applies if this section 32 statement is in respect of a terms contract where the purchaser is obliged to make 2 or more payments (other than a deposit or final payment) to the vendor after the execution of the contract and before the purchaser is entitled to a conveyance or transfer of the land.

Attached is a Law Institute of Victoria published "Additional Section 32 Statement".

1.4 Sale Subject to Mortgage

This section 1.4 only applies if this section 32 statement is in respect of a contract which provides that any mortgage (whether registered or unregistered), is NOT to be discharged before the purchaser becomes entitled to possession or receipts of rents and profits.

Attached is a Law Institute of Victoria published "Additional Section 32 Statement".

1.5. Commercial and Industrial Property Tax Reform Act 2024 (Vic) (CIPT Act) –

(a) The Australian Valuation Property Classification Code (within the meaning of the CIPT Act) most recently allocated to the land is set out in the attached Municipal rates notice or property clearance certificate or is as follows	AVPCC No. 210 & 220
(b) Is the land tax reform scheme land within the meaning of the CIPT Act?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
(c) If the land is tax reform scheme land within the meaning of the CIPT Act, the entry date within the meaning of the CIPT Act is set out in the attached Municipal rates notice or property clearance certificate or is as follows	Date: OR <input checked="" type="checkbox"/> Not applicable

2. INSURANCE

2.1 Damage and Destruction

This section 2.1 only applies if this section 32 statement is in respect of a contract which does NOT provide for the land to remain at the risk of the vendor until the purchaser becomes entitled to possession or receipt of rents and profits.

The Vendor remains liable until settlement

2.2 Owner-Builder – Not applicable

This section 2.2 only applies where there is a residence on the land that was constructed by an owner-builder within the preceding 6 years and section 137B of the Building Act 1993 applies to the residence.

Attached is a copy or extract of any policy of insurance required under the *Building Act* 1993.

3. LAND USE

3.1 Easements, Covenants or Other Similar Restrictions

- (a) A description of any easement, covenant or other similar restriction affecting the land (whether registered or unregistered) is in the attached copies of title document/s.
- (b) Particulars of any existing failure to comply with that easement, covenant or other similar restriction are:

None to the Vendor's knowledge

3.2 Road Access

There is NO access to the property by road if the square box is marked with an "X"

3.3 Designated Bushfire Prone Area

The land is in a designated bushfire prone area under section 192A of the *Building Act* 1993 if the square box is marked with an "X"

3.4 Planning Scheme

Attached is a certificate with the required specified information.

4. NOTICES

4.1 Notice, Order, Declaration, Report or Recommendation

Particulars of any notice, order, declaration, report or recommendation of a public authority or government department or approved proposal directly and currently affecting the land, being a notice, order, declaration, report, recommendation or approved proposal of which the vendor might reasonably be expected to have knowledge:

None to the vendor's knowledge however the vendor has no way of knowing the contents of any of the documents referred to above unless communicated in writing to the vendor by the relevant public authority or government department

4.2 Agricultural Chemicals

There are NO notices, property management plans, reports or orders in respect of the land issued by a government department or public authority in relation to livestock disease or contamination by agricultural chemicals affecting the ongoing use of the land for agricultural purposes. However, if this is not the case, the details of any such notices, property management plans, reports or orders, are as follows:

Not applicable

4.3 Compulsory Acquisition

The particulars of any notices of intention to acquire that have been served under section 6 of the *Land Acquisition and Compensation Act* 1986 are as follows:

Not applicable

5. BUILDING PERMITS

Particulars of any building permit issued under the *Building Act* 1993 in the preceding 7 years (required only where there is a residence on the land):

- Are contained in the attached certificate.

6. OWNERS CORPORATION

This section 6 only applies if the land is affected by an owners corporation within the meaning of the *Owners Corporations Act* 2006.

Not Applicable

7. GROWTH AREAS INFRASTRUCTURE CONTRIBUTION (“GAIC”)

Words and expressions in this section 7 have the same meaning as in Part 9B of the *Planning and Environment Act* 1987.

7.1 Work-in-Kind Agreement

This section 7.1 only applies if the land is subject to a work-in-kind agreement.

- (a) The land is NOT to be transferred under the agreement unless the square box is marked with an “X”
- (b) The land is NOT land on which works are to be carried out under the agreement (other than Crown land) unless the square box is marked with an “X”
- (c) The land is NOT land in respect of which a GAIC is imposed unless the square box is marked with an “X”

7.2 GAIC Recording

This section 7.2 only applies if there is a GAIC recording.

Any of the following certificates or notices must be attached if there is a GAIC recording.

The accompanying boxes marked with an “X” indicate that such a certificate or notice that is attached:

- (a) Any certificate of release from liability to pay a GAIC
- (b) Any certificate of deferral of the liability to pay the whole or part of a GAIC
- (c) Any certificate of exemption from liability to pay a GAIC
- (d) Any certificate of staged payment approval
- (e) Any certificate of no GAIC liability
- (f) Any notice providing evidence of the grant of a reduction of the whole or part of the liability for a GAIC or an exemption from that liability
- (g) A GAIC certificate issued under Part 9B of the *Planning and Environment Act* 1987 must be attached if there is no certificate or notice issued under any of sub-sections 7.2 (a) to (f) above

8. SERVICES

The services which are marked with an “X” in the accompanying square box are NOT connected to the land:

- Electricity supply Gas supply Water supply Sewerage Telephone services

9. TITLE

Attached are copies of the following documents:

9.1 (a) Registered Title

A Register Search Statement and the document, or part of a document, referred to as the “diagram location” in that statement which identifies the land and its location.

- 9.2 Evidence of the vendor’s right or power to sell (where the vendor is not the registered proprietor or the owner in fee simple).

10. SUBDIVISION

10.1 **Unregistered Subdivision** – Not applicable

10.2 **Staged Subdivision** – Not applicable

10.3 **Further Plan of Subdivision** – Not applicable

11. DISCLOSURE OF ENERGY INFORMATION – Not Applicable

(Disclosure of this information is not required under section 32 of the Sale of Land Act 1962 but may be included in this section 32 statement for convenience.)

Details of any energy efficiency information required to be disclosed regarding a disclosure affected building or disclosure area affected area of a building as defined by the *Building Energy Efficiency Disclosure Act 2010* (Cth)

- (a) to be a building or part of a building used or capable of being used as an office for administrative, clerical, professional or similar based activities including any support facilities; and
- (b) which has a net lettable area of at least 1000m²; (but does not include a building under a strata title system or if an occupancy permit was issued less than 2 years before the relevant date):

12. DUE DILIGENCE CHECKLIST

(The Sale of Land Act 1962 provides that the vendor or the vendor's licensed estate agent must make a prescribed due diligence checklist available to purchasers before offering land for sale that is vacant residential land or land on which there is a residence. The due diligence checklist is NOT required to be provided with, or attached to, this section 32 statement but the checklist may be attached as a matter of convenience.)

13. ATTACHMENTS

Lease for 139-141 Main Street Bairnsdale dated 29th September 2023 with Bairnsdale Optical Pty Ltd

Lease for 44A Bailey Street Bairnsdale dated 9th May 2024 with Doyle & Shields Pty Ltd

Notice of Rent Review to Bairnsdale Optical Pty Ltd dated 27/8/24

Renewal of Lease for 44B Bailey Street Bairnsdale commencing 1st January 2025

Sub Lease for 44B Bailey Street Bairnsdale with Maadaz Dance Studio

Copy Certificate of Title Volume 803 Folio 761

Planning Reports x 3

Land Information Certificates x 3

Water Information Statements x 2

State Revenue Office Clearance Certificates x 3

Vic Roads certificate

Building Regulations Certificates 1 & 2



Phone: (03) 9555 9111

www.commercialpropertyleases.com.au



Lease of Real Estate

with Guarantee & Indemnity
(Commercial Property)

Part, Lower Level, 139-141 Main Street,
Bairnsdale VIC 3875



[Ref:MIM:WS:232059]

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You should note the warranty in clause 22 and record any alterations to the lease conditions in schedule item 17 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 parties, including the **guarantor**, if any, agrees to be bound by and promptly perform their respective 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 comprising the premises or 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 \$20 million or other amount reasonably specified from time to time by the landlord , and (vi) loss of rent and outgoings for 18 months, and excesses paid or payable on claims, (e) costs incurred in providing services to the land, the building or the premises 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) cost of repairs or maintenance work in respect of an essential safety measure ; and

	(g) if the premises comprise only a part of the lettable area of the building , costs of whatever description, reasonably incurred by the landlord in the administration, management or operation of the land , the building and the premises including accountancy and audit fees , 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 or an owners corporation and are used or intended for use - <ul style="list-style-type: none"> (a) by the public; or (b) in common by the landlord or 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 13(b)
electronic signature	a visual representation of a person's handwritten signature or mark which is placed on a physical or electronic copy of this lease (or a notice given under this lease) by electronic or mechanical means, and " electronically signed " has a corresponding meaning
essential safety measure	has the same meaning as in the <i>Building Regulations 2018</i> or any subsequent corresponding regulations
fixed review date	a date specified in item 13(c)
GST	GST within the meaning of the GST Act
GST Act	<i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth)
Guarantor	the person named in item 3
Item	an item in the schedule to this lease
Land	the parcel of land comprising the premises or 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 other than the land of the landlord , in the premises or on the land and includes the property listed in item 5
lettable area	unless the Act applies and requires otherwise - <ul style="list-style-type: none"> (a) in relation to the premises, the area let; and (b) in relation to the building, the total area of the building that is used by the landlord or let or licensed or intended to be and capable of being let or licensed, other than on a casual basis. <p>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</p>
market review date	a date specified in item 13(a)
permitted use	the use specified in item 12
PPSA	the <i>Personal Property Securities Act 2009</i> (Cth)
Premises	the premises described in item 4(a) and fixed improvements and the landlord's installations within the premises but excluding the tenant's installations
Rent	the amount in item 6 , as varied in accordance with this lease
review date	a date specified in item 13
start of the lease	the earlier of- <ul style="list-style-type: none"> (a) the first day of the term; and (b) the date upon which the tenant or any previous tenant took occupation of the

premises under this lease or pursuant to an earlier lease or licence (whether or not on terms that are materially different from those in this lease) which together with this lease created an unbroken right to occupation of the **premises**.

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</i> (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 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 Unless the context otherwise requires, words to the effect of, a party "must" (or "must not") do a specified act or thing, create an obligation and undertaking by that party, a breach of which will constitute a default.

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 13** –
(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 17, 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 13** 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, internet 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 the **landlord** 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 that is 2% more than the rate from time to time fixed by the *Penalty Interest Rates Act 1983* (Vic.) 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 and requirements of relevant authorities relating to the use or occupation of the **premises** including those relating to **essential safety measures**, occupational health and safety and disability discrimination.
- 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**.
- 2.2 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 it being 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 \$20 million, with an extension which includes the indemnities given by the **tenant** to the **landlord** in clauses 5.3.2 and 5.3.3 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 including, if the **Act** applies, to engage at its own cost suitably qualified consultants to maintain and repair essential safety equipment and installations and if requested, to provide annual inspection reports to the **landlord**.
- 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** reasonable 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, SUBLETTING ETC

- 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 or licence of the **premises** if the **tenant** has complied with the requirements of clause 4.3 and the proposed transferee, subtenant or licensee 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, sublease or licence the **tenant** must -
- 4.3.1 ask the **landlord** in writing to consent to the transfer, sublease or licence,
- 4.3.2 give the **landlord** -
- (a) in relation to each proposed new tenant, sub-tenant or licensee 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, sublease or licence, the **landlord**, **tenant** and new tenant, sub-tenant or licensee and the **guarantor** must execute the documents submitted under sub-clause 4.3.2(b). The

directors of the new tenant, sub-lessee or licensee (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, sublease or licence to which the **landlord** has consented, or is to be taken as having consented, the **tenant** must not give up possession of or share occupancy of the **premises** to or with 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.
- 5.2 After this lease ends-all **tenant's installations** and other **tenant's** property on the premises may be removed by the landlord and the **landlord** may recover the costs of removal and making good as a liquidated debt payable on demand.
- 5.2.2 all **tenant's installations** and **tenant's** property on the premises will be considered abandoned and will become the property of the **landlord** either at the end of the **term** or if this lease ends before the term expires, 14 days after this lease ends.
 - 5.2.3 the parties acknowledge that this clause 5.2 is an agreement about the disposal of uncollected goods for the purposes of section 56(6) of the *Australian Consumer Law and Fair Trading Act 2012* (Vic) and to the extent permitted by law will 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**.
- 5.3 The **tenant** -
- 5.3.1 uses and occupies the **premises** at its own risk,
 - 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, and
 - 5.3.3 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**.
- 5.4 In relation to **building outgoings** -
- 5.4.1 the **landlord** must pay the **building outgoings** 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 outgoings** 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 outgoings** 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 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 3 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 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 credit or 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 **continuing after this lease ends**.
- 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 **plant and equipment at the premises**, and
- 6.2.4 breakage of glass, for its replacement value.
- 6.3 The **landlord** must if requested, give to the **tenant** the written consent to this lease of each mortgagee whose interest would otherwise have priority over this lease.
- 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 subject to clause 7.5, 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) the directors of the company
- (ii) membership of the company or its holding company,
- (iii) beneficial ownership of the shares in the company or its holding company, or
- (iv) 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; nor does it apply if the change results from the death or incapacity of an individual director or shareholder.
- "control" has the meaning set out at s.50AA of the *Corporations Act 2001*,
- 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 16. 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.
- 7.7 The **landlord** may only waive any –
- 7.7.1 breach of this lease by the **tenant** that is the subject of; or
- 7.7.2 rights or entitlements pursuant to;
- a notice under clause 7.5 or section 146(1) of the *Property Law Act 1958 (Vic)* by giving clear written notice of that waiver to the **tenant**.

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. 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 14** 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 15** 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 12.1.3.

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 (unless the **Act** otherwise permits) not more than 6 months nor less than 3 months before the end of the **term**.

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 **item 13**, 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 15** 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 16** 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 any interest accruing on it is to be 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 in a form approved by the **landlord** 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 fifth 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 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 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. GST

- 16.1 Expressions used in this clause 16 and in the **GST Act** have the same meanings as when used in the **GST Act** unless the context requires otherwise.
- 16.2 Amounts specified as payable under or in respect of this lease are expressed exclusive of **GST**.
- 16.3 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.
- 16.4 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 16.3 on account of the **landlord's** liability for **GST**.
- 16.5 A recipient of supply is not obliged, under clause 16.3, to pay the **GST** on a taxable supply to it under this lease, until given a valid tax invoice for it.

17. CONSUMER PRICE INDEX

- 17.1 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**.

- 17.2 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.
- 17.3 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.
- 17.4 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.
- 17.5 Unless the **Act** applies, the adjustment is not made if it would result in a decrease in the **rent** payable.

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

- 18.1 If the **premises** are only a part of the **lettable area** of the **building**, the provisions of this clause apply.
- 18.2 The **landlord** -
 - 18.2.1 may adopt whatever name it chooses for the **building** and change the name from time to time, and
 - 18.2.2 reserves all proprietary rights to the name of the **building** and any logo adopted for the **building**.
- 18.3 The **landlord** reserves for itself the use of all external surfaces of the **building** and areas outside the **building**.
- 18.4 The **landlord's installations** remain under the absolute control of the **landlord** whilst the **building** and **common areas** remain under the absolute control of either the **landlord** or the owners corporation. In each case the controller may manage them and regulate their use as it considers appropriate. If the **landlord** is the controller in particular the **landlord** has the right -

- 18.4.1 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,
- 18.4.2 to exclude persons whose presence the **landlord** considers undesirable,
- 18.4.3 to grant easements over any parts of the **land** which do not materially and adversely affect the **tenant's** use,
- 18.4.4 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
- 18.4.5 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**.

- 18.5 The **tenant** must not obstruct the **common areas** or use them for any purpose other than the purposes for which they were intended.
- 18.6 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.

19. PERSONAL PROPERTY SECURITIES ACT

- 19.1 Expressions used in this clause that are defined in the **PPSA** have the meanings given to them in the **PPSA**.
- 19.2 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 –
 - 19.2.1 the **landlord's installations**,
 - 19.2.2 any security deposit provided by the **tenant**, and
 - 19.2.3 **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. The **tenant** waives the right to receive notice under section 157(1) of the **PPSA**.

- 19.3 When this lease –
 - 19.3.1 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 19.2.3 relates.
- 19.4 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.
- 19.5 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**.
- 19.6 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**.
- 19.7 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).
- 19.8 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.

20. ADDITIONAL PROVISIONS

Any additional provisions set out in **item 17** –

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

21. ELECTRONIC SIGNATURE

- 21.1 The parties consent to execution of this lease (and any notice given under this lease) by any signatory by an electronic signature.
- 21.2 Where this lease (or a notice given under this lease) is electronically signed by a signatory, the signatory warrants and agrees that the electronic signature has been used to identify the person signing and to indicate that the signatory or the relevant party (as the case may be) intends to be bound by the electronic signature.
- 21.3 This lease may be electronically signed in any number of counterparts which together will constitute the one document.
- 21.4 Each party consents to the exchange of counterparts of this lease by delivery by email or such other electronic means as may be agreed in writing.
- 21.5 Each party must upon request promptly deliver a physical counterpart of this lease with the handwritten signature or signatures of the party and all written evidence of the authority of a person signing on their behalf, but a failure to comply with the request does not affect the validity of this lease.

22. LANDLORD WARRANTY

The **landlord** warrants that clauses 1 to 22 appearing in this lease are identical to clauses 1 to 22 of the copyright Law Institute of Victoria Lease of Real Estate published in the month and year set out at the foot of this page and that any modifications to them are set out as additional provisions in **item 17**.

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 22 and record any deletions, alterations and/or additions to the standard lease conditions as additional provisions in item 172 and **not** in the lease conditions.

Item 1
[1.1]

Landlord:

TM Comben Nominees Pty Ltd (ACN 125 822 782) as trustee for TM Comben Superannuation Fund (ABN 75 129 818 403) of Unit 110, 1 Brewer Road, Brighton East VIC 3187

Item 2
[1.1]

Tenant:

Bairnsdale Optical Pty Ltd (ACN 088 426 224) of 75 Macleod Street, Bairnsdale VIC 3875

Item 3
[1.1]

Guarantor:

Cameron John Dyson of 13 Kellina Court, Paynesville VIC 3880

Timothy Adam Warr of 15 Alvin Court, Bairnsdale VIC 3875

Phillipa Munday of 300 Rosherville Road, Metung VIC 3902

Item 4
[1.1]

(a) Premises:

Part, Lower Level, 139-141 Main Street, Bairnsdale VIC 3875 as per the area coloured yellow in the plan in Annexure A

(b) Land:

139-141 Main Street, Bairnsdale VIC 3875 being the land described in Certificate of Title Volume 08034 Folio 761

Item 5
[1.1]

Landlord's installations:

As inspected and as per Disclosure Statement

Item 6
[1.1]

Rent:

\$64,800.00 per annum for the first year of the initial term of the Lease

Note: There is no need to refer to GST if the rent is expressed as a GST exclusive sum – see clause 16; If the rent is expressed as a GST inclusive sum, an additional provision will be needed to modify the operation of clause 16.

Item 7
[1.1]

Tenant's installations:

Retail and office fixtures and fittings including floor coverings

Item 8
[1.1]

Term of the lease:

Five (5) years commencing on 1 September 2023

Item 9
[2.1.1]

How rent is to be paid:

By equal monthly instalments in advance commencing on 1 September 2023

Item 10
[1.1,
2.1.2,
2.1.5 &
5.4]

Building outgoings which the tenant must pay or reimburse:

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 39%;

(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 by them
- Internal flood water

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

Item 12
[2.2.1]

Permitted use:

Optometry Consultancy

Item 13
[2.1.1,
11,17]

Review date(s):

Term

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

Not Applicable

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

1 September 2024 – indexed to CPI

1 September 2025 – indexed to CPI

1 September 2026 – indexed to CPI

1 September 2027 – indexed to CPI

(c) *Fixed review date(s) and percentage or fixed amount increases:*

Not Applicable

Further term(s)

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

1 September 2028

1 September 2033

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

1 September 2029 – indexed to CPI

1 September 2030 – indexed to CPI

1 September 2031 – indexed to CPI

1 September 2032 – indexed to CPI

1 September 2034 – indexed to CPI

1 September 2035 – indexed to CPI

1 September 2036 – indexed to CPI

1 September 2037 – indexed to CPI

(c) *Fixed review date(s) and percentage or fixed amount increases:*

Not Applicable

Item 14
[2.1.1,
11, 17].]

Who may initiate reviews:

Market review: Landlord, subject to **Act**, if it applies

CPI review: Review is automatic

Fixed review: Not Applicable

Item 15
[12]

Further term(s):

Two (2) Further Terms of five (5) years each

Item 16
[13]

Security deposit:

The sum of \$5,940.00 being an amount equivalent to one (1) month rent payable by electronic funds transfer or unconditional bank guarantee with no expiry date increased from time to time.

Item 17
[20]

Additional provisions:

17.1 Condition of Premises

The Landlord and Tenant agree and acknowledge that the Tenant leases the premises in its present condition and the Tenant is responsible for investigating the suitability of the Premises for its Permitted Use as set out in Item 12 of this Lease.

17.2 Landlord's consent for Tenants Works

The Tenant must obtain the Landlord's written consent before commencing any fit out, alterations, additions, improvements, make good works and any such works to the Premises, consent for which shall not be unreasonably withheld or delayed. Any such costs incurred for such approval shall be borne by the Tenant. Furthermore, any such works must be approved by all authorities including council, body corporate, Landlord and any other relevant party and any necessary planning or building permits must be obtained prior to works commencing at the Tenant's cost. Any such works must be carried out by registered and suitably qualified tradespeople in accordance with current building codes.

17.3 Tenant to reinstate premises to original condition at the end of the Lease

Upon vacating the premises, the Tenant shall, subject to fair wear and tear reinstate the premises to the same condition as at the commencement of this Lease, failing which, rent and outgoings will continue to be payable until the Premises are reinstated. For the sake of clarity, this includes removal of any Tenant fit out including plant equipment, fixtures and fittings unless otherwise agreed in writing.

17.4 Essential Safety Measures

The Landlord and Tenant covenant to comply with all obligations arising from legislation or case law as to the provision and maintenance of Essential Safety Measures, including but not limited to record keeping and display, that may be required at the premises ('ESM obligations'), for the duration of the Lease and any further terms.

17.5 Notice of breach of Essential Safety Measures

The Tenant shall immediately provide the Landlord or the Landlord's Managing Agent with written notice of any matter which to the best of the Tenant's knowledge and belief may amount to a breach of the Landlord and Tenant's ESM obligations as defined above.

17.6 Cost of Essential Safety Measures

Subject to any relevant legislation and case law stating otherwise, the Tenant shall be responsible for the reasonable cost of inspecting, reporting, maintaining and servicing all Essential Safety Measures at the premises belonging to the Landlord, in accordance with the Landlord's ESM obligations including, but not limited to, the servicing of fire protection equipment.

17.7 Essential Safety Measures costs incurred from updated use of Premises.

In the event that, with the Landlord's written consent, the Tenant changes its use of the premises from the permitted use listed in Item 12 herein, and the new use of the premises has any direct or indirect effect on the Essential Safety Measures required at the premises, the Tenant will be solely responsible for all costs incurred directly or indirectly from such change of the use of the premises.

17.8 Service Agreement

Immediately upon commencement of the initial term of this Lease, and during any further terms of the Lease, the Landlord or its Managing Agent will enter into and keep in force a service agreement with a firm of contractors who specialise in the maintenance and service of essential safety measures including, but not limited to, firefighting equipment, emergency and exit lighting within the premises in accordance with the building regulations and the Tenant will be liable to pay the reasonable costs associated with the maintenance agreement.

17.9 Inconsistency

This Lease will be subject to any changes to the relevant legislation and case law and in the event of an inconsistency between the terms of this Lease and any of the relevant legislation and case law, the relevant legislation and case law shall prevail to the extent of the inconsistency, and this shall include any relevant legislation and case law which states that the Tenant will be liable for any or all costs of the Landlord and Tenant's ESM obligations.

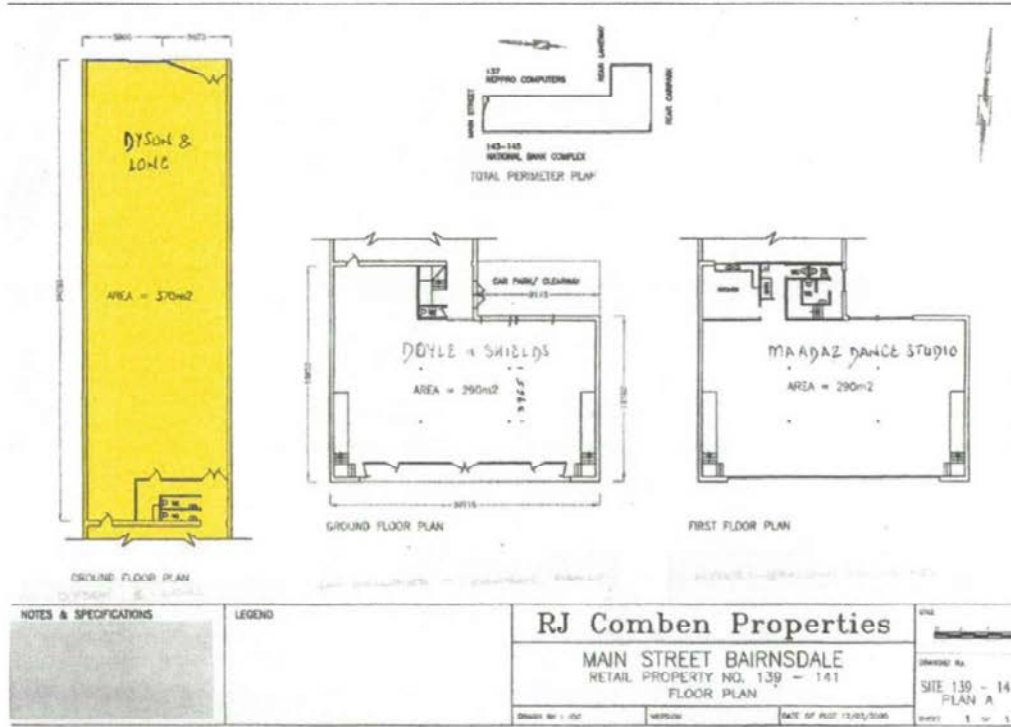
17.10 Signage

The Tenant shall be entitled to place signage upon the Premises, but signage shall only be permitted upon the Premises with the written consent of the Landlord. The Landlord will not unreasonably decline a request from the Tenant to place signage on the Premises so long as all requests are approved by all authorities including council, body corporate, Landlord and any other relevant party and any necessary planning or building permits are obtained prior to works commencing. Any such works must be carried out by registered and suitably qualified tradespeople in accordance with current building codes.

17.11 Retail Leases Act 2003 (VIC)

The Landlord and Tenant agree that this Lease is subject to the *Retail Leases Act 2003* (VIC).

Annexure A
Plan of Premises


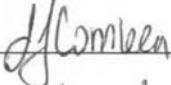


EXECUTED AS A DEED ON:

Date: 29 / 9 / 2023

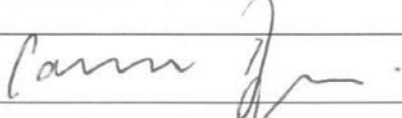

EXECUTION & ATTESTATION

LANDLORD

Executed by TM Comben Nominees Pty Ltd (ACN 125 822 782) in accordance with section 127 of the Corporations Act 2001(Cth)	
Director	
Print Name	TM COMBEN
Print usual address	apart 110, BREWFARO BRIGHTON EAST
Director/Secretary	
Print Name	LISA COMBEN
Print usual address	27 HAMILTON ST, BRIGHTON, 3186

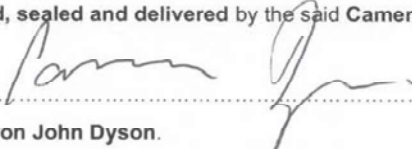

EXECUTION & ATTESTATION

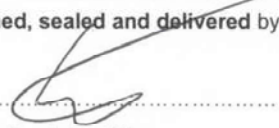

TENANT

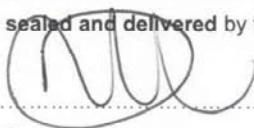

Executed by Bairnsdale Optical Pty Ltd (ACN 088 426 224) in accordance with section 127 of the Corporations Act 2001(Cth)	
Director	
Print Name	CAMERON DYSON
Print usual address	13 KELLINA CRT PAINESVILLE 3880
Director/Secretary	
Print Name	Tim Warr
Print usual address	22 church st, Lindenow 3865

EXECUTION & ATTESTATION

GUARANTORS

Signed, sealed and delivered by the said Cameron John Dyson	
	
Cameron John Dyson.	
In the presence of Witness	
Print name	Jamie Haas
Print usual address	320 Stephenson Rd Nicholson VIC 3882

Signed, sealed and delivered by the said Timothy Adam Warr	
	
Timothy Adam Warr	
In the presence of Witness	
Print name	Jamie Haas
Print usual address	320 Stephenson Rd Nicholson VIC 3882

Signed, sealed and delivered by the said Philipa Munday	
	
Philipa Munday	
In the presence of Witness	
Print name	Jamie Haas
Print usual address	320 Stephenson Rd Nicholson VIC 3882

T M Comben
1:10, 1 Brewer Rd
BRIGHTON EAST VIC 3187

27 August 2024

Mr Cameron Dyson
Dyson & Long
139 Main St
BAIRNSDALE VIC 3875

By email: camdyson@dysonandlong.com.au

Dear Cameron

Lease of 139 Main Street, Bairnsdale – Rental increase to CPI

I refer to the Lease of the above premises. Item 13(b) of the Lease schedule provides the relevant adjustment date is 1 September 2024. I now set out the calculation of the relevant CPI increase.

Clause 17 of the Lease provides for the adjustment of rental by reference to the CPI in accordance with the following formula:

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

Where:

- AR is the adjusted rental (payable from the review date);
- R is the rent before adjustment;
- CPIB is the CPI All Groups (Melbourne) number for the quarter immediately preceding the CPI review date; and
- CPIA is the CPI All Groups (Melbourne) number 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.

The ABS website provides CPI details. The relevant CPI figure for the June quarter of 2024 is 138.4, up from 133.5 for the June quarter of 2023. Where the current rental is \$64,800 (ex GST), the relevant calculation is:

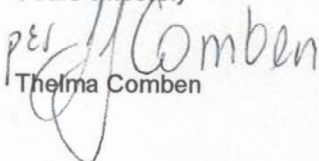
$$AR = \$64,800 \times \frac{138.4}{133.5} = \$67,178.43$$

Accordingly, the new annual rental figure is **\$67,178.43 plus GST**. The relevant monthly rent is therefore \$5,598.20 plus GST (or **\$6,158.02 inc GST**). Any small discrepancy in the figures (cents) is due to rounding up and rounding down when calculating GST or arriving at monthly rental figures.

My accountant will shortly generate the September invoice inclusive of this CPI increase for Ms Munday's attention, as requested. Invoices for the remainder of the lease year will be rendered at the increased amount, if you could please adjust your direct debit arrangements accordingly.

Please phone Lisa Comben on 0408 560 842 or Jason Comben on 0499 313 144 if you have any concerns with the above.

Yours sincerely


Thelma Comben

Code 143

Commercial Lease®

The Real Estate Institute of Victoria Ltd | ACN 004 210 697 | www.reiv.com.au |

The Real Estate Institute of Victoria Ltd COPYRIGHT COMMERCIAL LEASE®

Landlord(s): Thelma Margaret Comben
ABN 20 929 839 809

Tenant(s): Doyle & Shields Pty Ltd trading as Doyle & Shields
ABN 84 004 921 233

Premises: 44A Bailey St (being ground floor, rear of 139-141 Main St)
Bairnsdale, Victoria, 3875

Commercial Lease[®]**ABOUT THIS LEASE**

This is a standard form document. It can be used in the letting of retail, commercial or industrial premises in Victoria, whether or not retail lease laws apply. It may need to be altered or added to or both to properly record a lease, as negotiated. **Alterations, additions or both should be recorded in the Special Conditions Schedule not by making changes or additions to the Lease itself.** Depending on circumstances, it may be prudent to obtain professional help when drawing up this Lease. The REIV Copyright Commercial Lease Schedule (Code 144) must be completed in conjunction with this Lease.

Landlord advice

The landlord confirms this lease is in the copyright format published by The Real Estate Institute of Victoria Ltd as at the date/version printed on the front page, unless there are alterations or additions or both which appear in the Special Conditions Schedule. The tenant should check the Special Conditions Schedule, before signing this lease.

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This lease is made between the landlord and the tenant named in the Schedule for the premises for the term beginning on the commencement date as specified in the Schedule.

This lease comprises -

- the respective covenants of the landlord and the tenant; and
- the Schedule; and
- the Special Conditions, if any, in the Special Conditions Schedule.

If the Act applies, this lease has effect subject to it.

The tenant covenants and agrees with the landlord as follows -

1. Rent

- 1.1 To pay the rent in advance during the term and any over-holding by equal, consecutive calendar monthly instalments starting on the rental commencement date specified in the Schedule and then on the first day of each month, unless otherwise agreed. The first and the final payments of the rent will be apportioned, if necessary.
- 1.2 Each instalment of rent will be paid -
- (a) without demand, deduction, or set-off (whether legal or equitable); and
 - (b) in the manner required by the landlord from time to time.

2. Outgoings

- 2.1 During the term and any over-holding to pay on or before the due date for payment, or to repay to the landlord within 14 days of demand, the following outgoings in connection with the premises -
- (a) municipal, water, drainage, and sewerage rates, charges, levies and special rates or levies;
 - (b) land tax calculated on the basis the premise or the building of which the premises forms a part is the only land owned by the landlord (single holding);
 - (c) congestion and parking levies;
 - (d) gas, electricity, telephone, communications, sewage or garbage/waste disposal, and water consumption charges;
 - (e) owners corporation fees, special fees and charges;
 - (f) the expense of cleaning, inspecting, maintaining, repairing and/or servicing the premises and the landlord's fixtures, fittings, plant or equipment in or serving the premises;
 - (g) fire service levies;
 - (h) insurance premiums and other charges for insurances effected by the landlord in relation to the premises including (but not limited to) fire insurance on all improvements on a replacement and reinstatement basis and such other risks as the landlord may require from time to time and whether or not the risk is one in respect of which insurance is commonly obtainable at the commencement of this lease. The insurances may include plant and equipment breakdown insurance, public liability insurance for the amount of cover specified in the Schedule, loss of rent and consequential loss insurance and any other insurance effected by the landlord in relation to any risk relating to the landlord's ownership or interest in the premises. The landlord may insure for such amounts and with such extensions and exclusions as the landlord thinks fit, but if the Act applies the landlord is not entitled to recover any premiums or other charges which the landlord may be prohibited from claiming from the tenant under the Act;
 - (i) the expense of the attendance of the fire brigade in response to a fire alarm generated from or in connection with the premises;
 - (j) the expense of inspecting, auditing, servicing, repairing, maintaining, monitoring, and testing all essential safety measures at or provided in relation to or in connection with the premises, provided the payment or repayment is not contrary to law; and

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- (k) any other outgoings of whatever nature which are now or may during the term or any period of overholding be charged to or payable by the landlord in respect of or in connection with the premises unless expressly excluded in the Schedule.
- 2.2 If an outgoing relates to a period outside the term or a period of over-holding it will be apportioned.
- 2.3 If an outgoing is not separately assessed or charged in relation to the premises, to pay or reimburse a portion calculated on the proportion which the lettable area of the premises bears to the lettable area of the whole of the land or the building to which the outgoing relates, unless some other manner of apportionment is set out in the Schedule.
- 2.4 If the Act applies, to pay that proportion of the outgoings -
- (a) that benefit all premises in the building: the proportion that the lettable area of the premises bears to the lettable area of the building, as stated in the Schedule;
 - (b) that benefit the premises and only some of the other premises in the building: the proportion that the lettable area of the premises bears to the lettable area of all premises that together share the benefit of the outgoing;
 - (c) that benefit only the premises: 100%.
3. **Building operating expenses**
- 3.1 During the term and any over-holding to pay, or to repay the landlord within 14 days of demand, a proportionate share of all expenses paid or incurred by the landlord in operating, managing, equipping, lighting, repairing, and maintaining the building including (without limitation) lavatories, sanitary services, cleaning, fire protection, essential safety measures, insurance premiums in respect of liability and other risks which the landlord reasonably requires.
- 3.2 The tenant's proportion of the expenses will be determined in the same manner as that referred to in clause 2.4 unless -
- (a) some other way of apportioning the expenses is described in the Schedule; or
 - (b) the Act applies to an expense, in which case the tenant's proportion must exclude an expense that the landlord is not permitted to recover from the tenant; or
 - (c) legislation (by way of example, but not limited to, the Building Act 1993) applies to an expense, in which case the tenant's proportion must exclude the proportion, if any, of the expense that the legislation prohibits the landlord recovering from the tenant.
4. **Insurances**
- 4.1 To effect and keep current during occupation of the tenant a public liability policy in the name of the tenant for an amount of not less than \$20 million or such higher amount as the landlord may reasonably require from time to time. The policy must be placed with an insurer approved by the landlord, approval not to be unreasonably withheld. The tenant must produce evidence of the currency of the insurance, within seven days of a request to do so.
- 4.2 Not to do, allow, or acquiesce in anything being done at the premises or the building which may result in a policy of insurance relating to the premises becoming void or voidable or which may allow an insurer to decline a claim under a condition or exclusion contained in the policy or policies or otherwise or which may result in the premium being increased. If a premium is increased, the tenant must promptly pay or reimburse the increase (Note: this obligation applies even if the tenant pays rent on a gross lease basis).
- 4.3 To pay or reimburse the landlord for any excesses on insurance claims, or to pay the expense of works or repairs where the expense of the works or repairs would be less than the excess payable on an insurance claim, if an insurance claim had been made.
- 4.4 To effect and keep current during the tenant's occupation of the premises an insurance policy covering the tenant's and others goods at the premises for their current reinstatement or replacement cost against damage or destruction by fire, water, theft, malicious and accidental damage, storm, lightning and tempest, earthquake, explosion, impact by vehicles and aircraft and articles dropped from aircraft.

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5. Maintenance and repairs

- 5.1 During the term and any period of over-holding to maintain and keep in the state of repair existing on the commencement date of the term -
- (a) the exterior (including - but not limited to - fences, landscaped areas, vehicle parking areas, pathways, driveways and hard-stand areas) and the interior of the premises and the landlord's fixtures and fittings at the premises. The landlord's fixtures and fittings installed at the premises on the commencement date of the initial term are set out in the Schedule; and
 - (b) any roller shutter doors and electronically operated gates comprised in the landlord's fixtures and fittings by engaging the services of an appropriate contractor approved by the landlord and to produce evidence of the engagement and maintenance to the landlord or the managing agent on request fair wear and tear and damage to the premises or the landlord's fixture and fittings by fire or other cause not attributable to the default or negligence of the tenant or the negligence of the tenant's licensees or invitees excepted.
 - (c) For the avoidance of doubt, "commencement date of the term" means the commencement date of the initial term, if the lease is renewed for a further term or terms.
- 5.2 If during the term or a period of over-holding alterations or additions are made to the premises or to the landlord's fixtures and fittings installed at the premises, to maintain them in the condition they were in when made, subject to the exceptions to clause 5.1.
- 5.3 To replace with a similar article of at least equal value any landlord's fixture or fitting destroyed, lost, or so badly damaged that it cannot be satisfactorily restored to its former condition, subject to the exceptions to clause 5.1.
- 5.4 Damage to or deterioration in the condition of the premises or the landlord's fixtures and fittings or both will not be attributable to fair wear and tear if it is wholly or partly brought about because the tenant has not or has inadequately carried out maintenance or repairs or has permitted, allowed or acquiesced in -
- (a) structural loadings being exceeded;
 - (b) vehicles with inappropriate tyres or tracks or of excessive weight or size being used at or allowed on the premises;
 - (c) the fixtures and fittings of the landlord or the tenant being used in a manner inconsistent with their purpose;
 - (d) inadequate rubbish or waste removal, cleaning, gardening, lawn mowing or pest control.
- 5.5 During the term and any period of over-holding to -
- (a) thoroughly cleanse the inside and outside of the external and internal windows of the premises at least once in every three months (calculated beginning on the commencement date of the term) and also when otherwise reasonably required from time to time by the landlord or managing agent;
 - (b) keep all drains waste pipes, gutters, spouting, rain-heads, and downpipes which exclusively serve the premises clean and free of debris;
 - (c) only remove the landlord's fixtures and fittings from the premises if it is necessary to do so to have them repaired or replaced, and then only if the landlord or managing agent has first given written consent;
 - (d) only engage a person to maintain, alter, repair, install or make alterations or additions to the premises or to carry out repairs to or removal of the landlord's fixtures and fittings if the landlord or the managing agent has first given written approval, which will not be unreasonably withheld;
 - (e) promptly unblock or repair or both the sewers, drains, wash basins, sinks, showers, lavatories, sanitary apparatus, washing facilities and mechanical installations in or serving the premises. Workmanship and materials to be to the reasonable satisfaction of the landlord or the managing agent. The tenant acknowledges having inspected these items on or before the commencement date and on inspection they were found to be unblocked and undamaged;
 - (f) promptly replace broken or damaged glass, including float or plate glass, of the external and internal windows and other broken or damaged glass with glass conforming to the then applicable Australian Standard, whether or not the tenant is responsible for the breakage or damage and notwithstanding the exception to clause 5.1. Materials and workmanship to be to the reasonable satisfaction of the landlord or the managing agent;

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- (g) promptly repair or replace window or door fittings (including - but not limited to - frames, handles, fastenings and locks), light fittings, light globes, fluorescent tubes and starters, keys, key cards, and remote controls that are broken, become defective, or are mislaid, notwithstanding the exception to clause 5.1. Replacement parts, materials and workmanship are to be to the reasonable satisfaction of the landlord or the managing agent;
- (h) promptly remove graffiti from the premises, with the exception of that existing at the commencement of the initial term;
- (i) keep the premises free of pests and vermin by engaging qualified contractors approved by the landlord or the managing agent, approval not to be unreasonably withheld.

6. Alterations and additions

6.1 Before -

- (a) making structural alterations or additions to the premises; or
- (b) removing or relocating existing partitions, fixtures or fittings from or within the premises; or
- (c) installing partitions or other fixtures or fittings in the premises; or
- (d) decorating or redecorating the premises;

to obtain the written consent of the landlord or the managing agent.

6.2 Subject to clause 6.3, when giving consent the landlord or the managing agent may impose reasonable conditions. Reasonable conditions include (but are not limited to) provision of full-size approved plans and other working drawings, detailed specifications, complete and legible copies of permits, approvals and/or certificates, engineer reports, insurance, details of materials, and contractors being approved as required by clause 5.5(d).

6.3 The landlord or the managing agent may refuse consent if the giving of it will result in the Landlord having to undertake works to upgrade the premises or the building in which the premises are located to meet then current requirements of building laws.

7. Notice of accidents to premises/building

7.1 To promptly give written notice to the landlord or to the managing agent on becoming aware of an accident to or a defect in -

- (a) the premises; or
- (b) the building, if affecting access to the premises; or if affecting -
 - (i) water; or
 - (ii) sewerage; or
 - (iii) gas; or
 - (iv) electrical; or
 - (v) essential safety

fixtures and fittings connected to or serving the premises.

8. Inspecting the premises

8.1 The landlord, the managing agent or both may enter and inspect the premises on giving 24 hours prior written notice and at any time without notice, if there is an emergency.

8.2 On inspecting the premises the landlord, the managing agent or both will -

- (a) cause as little inconvenience as possible in the circumstances to the tenant; and may
- (b) bring with them any person, equipment and materials considered appropriate in the circumstances.

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9. Tenant to clean, repair and make good damage

- 9.1 To keep the premises in a thoroughly clean and tidy condition.
- 9.2 To store rubbish, garbage, and trade waste on the premises in secure containers and have it regularly removed at appropriate intervals.
- 9.3 To repair and make good to the reasonable satisfaction of the landlord or the managing agent any damage to the premises for which the tenant is responsible under the terms of this lease, within 14 days (or a shorter period if reasonable in the circumstances) after having been given written notice stating the damage.
- 9.4 The landlord or the managing agent or others on their behalf may enter the premises bringing equipment and materials and repair and make good the damage, if the tenant does not do so within the time stated in the written notice.
- 9.5 To pay, or repay on demand, to the landlord or the managing agent all reasonable amounts spent in connection with repairing and making good the damage for which the tenant is responsible including (but not limited to) labour, equipment, materials, approvals, permits, certificates, professional services, bank or financiers' charges and interest.

10. Returning the premises to the landlord

- 10.1 When the term or any over-holding comes to an end (whether by the passing of time or otherwise), to return the premises to the landlord in the required condition and at the time of doing so will have -
 - (a) removed the tenant's fixtures and fittings and goods including signage and advertising;
 - (b) made good any damage to the premises and/or the building resulting from or arising in connection with the installation or removal of the tenant's fixtures and fittings and goods; and
 - (c) reinstated the premises to the condition that existed when the first term of the lease commenced, if there has been a previous term or previous terms; and
 - (d) cleansed and tidied the premises and the landlord's fixtures and fittings.
- 10.2 If the tenant does not comply with clause 10.1(a) the landlord or the managing agent may dispose of the tenant's fixtures and fittings and goods in the manner permitted by the Australian Consumer Law and Fair Trading Act 2012 for the disposal of uncollected goods.
- 10.3 For the avoidance of doubt, "in the required condition" means in a condition consistent with the tenant's due performance of the obligations in clauses 5 and 9 and 11.3.

11. Signs

- 11.1 Before placing a sign on the premises to -
 - (a) obtain the written consent of the landlord or the managing agent, which may be subject to reasonable conditions; and
 - (b) obtain any permit(s) required and keep them current; and
 - (c) promptly provide a complete, legible copy of any permit(s) to the landlord or the managing agent.
- 11.2 A sign will comply with the law and be -
 - (a) displayed as required by the consent and permit(s);
 - (b) securely fastened;
 - (c) maintained in good condition; and
 - (d) removed when the lease ends.
- 11.3 On removing a sign, to make good damage to the premises or the building caused in connection with its installation, use or removal.

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12. Use of the premises

- 12.1 If an approval or a consent or a permit or any or all of them is necessary to use the premises for the permitted use, to -
- (a) obtain it; and
 - (b) comply with it; and
 - (c) keep it current; and
 - (d) promptly give a complete, legible copy of it and any renewal of it to the landlord or the managing agent.
- 12.2 To use the premises for the permitted use specified in the Schedule and no other.
- 12.3 To carry on the permitted use at the premises during the usual business hours for the permitted use.
- 12.4 Not to discontinue the permitted use either temporarily or permanently, without the prior written consent of the landlord or the managing agent.
- 12.5 To comply with laws relating to the premises or the permitted use. But structural alterations or additions do not have to be made, unless necessary in connection with the permitted use.
- 12.6 In using the premises not to do, allow, or acquiesce in anything that may -
- (a) be illegal; or
 - (b) create noise levels above those acceptable from time to time for the permitted use and in any event not use radio, television or other media at a volume audible outside the premises; or
 - (c) create a danger or health risk to those on the premises or to the public; or
 - (d) create a nuisance or disturb an owner or occupier of adjacent premises or nearby property; or
 - (e) result in structural loadings being exceeded; or
 - (f) adversely affect the landlord's insurance resulting in -
 - (i) a policy becoming void or voidable; or
 - (ii) a premium or deductible being increased; or
 - (iii) a claim being rejected.
- 12.7 Not to permit, allow, or acquiesce in an animal, fish, bird, or reptile being on the premises.
- 12.8 Not to conduct, allow or acquiesce in an auction at or from the premises, without the prior written consent of the landlord or the managing agent.
- 12.9 Not to hold, allow or acquiesce in the holding of a public meeting at, in or from the premises, without the prior written consent of the landlord or the managing agent.

13. Occupational Health and Safety Act 2004 (OHSA)

- 13.1 The tenant acknowledges and agrees it has management and control of the premises for the purposes of the OHSA.
- 13.2 To observe and comply with the requirements imposed on the tenant by the OHSA. In particular and without limiting the generality of the foregoing, the tenant will maintain free of obstruction all means of entry and exit at, and so far as is reasonably possible in the immediate vicinity of, the premises.
- 13.3 To give written notice to the landlord or to the managing agent as soon as possible on becoming aware of an actual or a potential issue at, or in the vicinity of, the premises affecting occupational health and safety.
- 13.4 To hold the landlord and the managing agent indemnified against all costs, expenses, claims, demands, actions, judgements, or orders incurred by or made against the landlord or the managing agent in connection with or in relation to the tenant's failure to observe and comply with the requirements imposed on it by the OHSA and regulations and by this clause.

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14. Assignment and sub-letting

14.1 Section 144 of the Property Law Act 1958 does not apply to this lease.

14.2 Not to -

- (a) assign; or
- (b) sub-let; or
- (c) licence; or
- (d) part with occupation of

the premises or the tenant's legal or equitable interest in the premises unless the landlord or the managing agent has in each instance given prior written approval.

14.3 Subject to clause 14.4, the landlord or the managing agent will not unreasonably refuse approval.

14.4 It is not unreasonable for the landlord or the managing agent to refuse approval if -

- (a) the Act will then apply, if it did not apply when consent was sought;
- (b) the permitted use is to change;
- (c) the tenant has unpaid rent or outgoings;
- (d) the tenant has not made good a notified default;
- (e) no, or insufficient, details about the assignee, sub-tenant, licensee or person who will occupy the premise are provided;
- (f) the landlord or the managing agent is of the reasonable opinion the assignee, sub-tenant, licensee or person who will occupy the premises lacks sufficient means, ability, or business experience to carry on the permitted use - or, if it is proposed the permitted use be changed, the permitted use as proposed - and comply with the lease, on the basis of information provided;
- (g) the documents for the assignment, sub-letting, licensing, or parting with occupation are not reasonably acceptable to the landlord, the landlord's managing agent, or Australian legal practitioner or conveyancer;
- (h) all reasonable costs and expenses incurred by the landlord in relation to or in connection with giving approval have not been paid by the tenant;
- (i) the tenant, the assignee, sub-tenant, licensee or person taking occupation of the premises has not signed the documents for the transaction, at the time the landlord is to sign the documents;
- (j) the tenant or a guarantor of the tenant will be released from their obligations on the assignment, sub-lease, licence, or parting with occupation;
- (k) if the assignee, sub-tenant, licensee or person taking occupation of the premises is required to provide a guarantee and indemnity in favour of the landlord, the guarantee and indemnity is not in a form approved by the landlord's Australian legal practitioner.

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15. Reletting, sale and other rights of entry

15.1 To allow -

- (a) the affixing of "For Lease" and "For Sale" / "Auction" signs to the premises, in positions that do not unreasonably interfere with the tenant's business; and also
- (b) on receiving 24 hours prior written notice, prospective tenants or purchasers, on being accompanied by the landlord or the managing agent, and also valuers, who do not have to be accompanied, to enter and inspect the premises at reasonable times and when doing so to make photographic and video images of the premises; and also
- (c) on receiving 24 hours prior written notice, except if there is an emergency in which case no prior notice is required, others having a contractual right, under a contract with the landlord or the managing agent, to come on to and remain on the premises from time to time with necessary personnel, plant, equipment and materials for the purposes of attending to the landlord's obligations under this lease or obligations under laws applicable to the premises or the building,

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16. Security deposit

- 16.1** Before taking possession of, or being provided with occupation of, the premises and thereafter from time to time during the term or any period of over holding to provide a security deposit in cash or a bank guarantee, as may be required by the landlord, in the amount specified in the Schedule.
- 16.2** A bank guarantee provided as the security deposit will be -
- (a) in a form reasonably required by the landlord or the managing agent and which does not specify an expiry date;
 - (b) provided by a bank listed by the Australian Prudential Regulation Authority as -
 - (i) an Australian-owned bank; or
 - (ii) a foreign subsidiary bank; andin either case
 - (iii) must have an office at Melbourne at which payment will be made, on presentation of the bank guarantee;
 - (c) handed to the landlord or the managing agent as provided in clause 16.1
- 16.3** The landlord or the managing agent will hold the security deposit and may use it if-
- (a) a payment to be made by the tenant to the landlord is not made within 14 days of the due date for payment;
 - (b) a default is not made good as required by notice;
 - (c) the premises are not returned to the landlord in the required condition when this lease or any overholding ends.
- 16.4** The landlord or the managing agent is not required to advise the tenant before using the security deposit.
- 16.5** To maintain the security deposit at the required amount during the term and any over-holding.
- 16.6** If the security deposit is not sufficient to -
- (a) meet a payment; or
 - (b) make good a default; or
 - (c) put the premises into the required condition
- to pay the additional amount required to do so on demand.
- 16.7** Not to fail or refuse to make a payment because it may be met in part or entirely from the security deposit.
- 16.8** If the security deposit is provided in cash, not to permit, allow or acquiesce in a financing statement being registered over it, except by the landlord.
- 16.9** To provide information, sign documents and do anything else required to allow the landlord to -
- (a) register a financing statement over the security deposit; or
 - (b) either comply with obligations or enforce rights or both under the PPSA
- and even though this lease has expired or come to an end.
- 16.10** Notice of a verification statement under section 157(1) of the PPSA is not required.
- 16.11** If in the reasonable opinion of the landlord or the managing agent the premises are in a clean and tenantable condition at the date on which the tenant vacates and the tenant has otherwise complied with the tenant's obligations, the security deposit will be repaid or the bank guarantee returned within 14 days after the date on which the landlord or the managing agent determine the premises are in such a condition.

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17. Interest

- 17.1 To pay interest on any monies payable to the landlord which are not paid on the due day for payment (monies overdue), if demanded.
- 17.2 The rate of interest will be that fixed from time to time under section 2 of the Penalty Interest Rates Act 1983.
- 17.3 Interest will be calculated and charged on the monies overdue from time to time beginning on the day after the day on which payment is due to and including the day on which the monies overdue are paid in full.

18. Landlord's costs and expenses / stamp duty

- 18.1 To pay, or to repay, on demand: -
- (a) The landlord's reasonable managing agent's, legal or conveyancer's costs and out-of-pocket expenses incurred in connection with -
 - (i) the negotiation, preparation, settling and signing of this lease;
 - (ii) a default by the tenant;
 - (iii) a request to give or obtain a consent or an approval, whether or not given or obtained;
 - (iv) a variation, surrender or assignment of this lease;
 - (v) a renewal of this lease;
 - (b) Stamp duty (if any) assessed in connection with this lease or a renewal of it.
- 18.2 If the Act applies, the landlord may only recover costs and out-of-pocket expenses as permitted by the Act.

The landlord covenants and agrees with the tenant as follows -

19. Quiet enjoyment

- 19.1 If the tenant -
- (a) pays the rent, outgoings and other expenses payable by the tenant under the terms of this lease when due; and
 - (b) carries out and complies with the tenant's other obligations the tenant may, subject to the rights of entry set out in this lease, occupy and use the premises for the permitted use during the term and any over-holding without interruption by the landlord or a person rightfully claiming through, under, or in trust for the landlord.

20. Access to the premises

The tenant may use in common with others the usual means for entering and leaving the premises, during the term or any over-holding.

21. Insurance

To provide the tenant with details of insurance covers taken out by the landlord in relation to the premises, on receiving written request.

The landlord and the tenant covenant and agree with each other as follows -

22. Over-holding

- 22.1 If the tenant does not have an option to renew this lease for a further term or if having an option to renew does not exercise it in the required manner, then if at least 3 months before the term expires, unless otherwise agreed in writing -
- (a) the tenant has not given the landlord written notice of intention to vacate the premises; or
 - (b) The landlord has not given the tenant a written notice requiring possession of the premises on the day after the day on which the term expires -
 - (i) the tenant will be a tenant from month-to-month; and

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- (ii) on the terms and conditions of this lease, so far as they are applicable to a monthly tenancy; and
- (iii) the monthly rent will be the same as that payable when the term expired, unless otherwise agreed; and
- (iv) the landlord may vary the monthly rent on giving one month's prior written notice; and
- (v) the landlord or the tenant may end the tenancy at any time by giving three months prior written notice.

23. Further term

23.1 If the tenant may renew this lease for a further term as specified in the Schedule, the tenant may do so if -

- (a) rent and other payments to be made by the tenant are not in arrears; and
- (b) there is no un-remedied default of which written notice has been given by the landlord; and
- (c) there have been no persistent defaults during the term of which written notices have been given by the landlord; and
- (d) written notice of the renewal dated and signed by the tenant is given to the landlord or the managing agent not more than 3 months before and no later than 5:00 pm on the last day to exercise the option set out in the Schedule. (*if there is more than one tenant, each must sign the notice)

23.2 The lease for the further term will be on the terms and conditions of this lease, except -

- (a) this clause 23 will be omitted, if there is no further term; or
- (b) if there is a further term(s) remaining, the lease will be altered to omit the renewed further term;
- (c) if the rent for the further term is to be agreed and there is no agreement within 30 days before the commencement date of the further term then - unless before the 30 days ends some other period of time has been agreed for concluding an agreement about the rent - the rent for the further rent will be determined as set out in clause 24.2.

24. Review of the rent to market

24.1 The rent -

- (a) then payable on the terms of this lease; or
- (b) the rent as agreed or determined for the then current further term

will be reviewed to the current market rent of the premises (the rent) on each market review date specified in the Schedule.

24.2 If the Act does not apply and the rent for a further term has not been agreed as provided in clause 23.2 (c) or within 60 days after a market review date, the rent will then be determined, as follows -

- (a) the landlord or the tenant or both may apply to the REIV for the appointment of a valuer to determine the rent;
- (b) the landlord and the tenant will co-operate with one another and with the REIV and do all things required by the REIV so the appointment of a valuer can be made with a minimum of delay;
- (c) the landlord and the tenant will each pay fifty percent (50%) of the fees and expenses of the REIV in making the appointment and of the valuer in determining the rent, unless other percentages are agreed in writing. If either of them neglects or refuses to pay their share, or a part of it, the other may do so on their behalf and recover the payment on the basis of an account stated;
- (d) the valuer will determine the rent as an expert, on formally accepting the appointment;
- (e) in determining the rent the valuer will not take into account improvements, fixtures and fittings -
 - (i) paid for by the tenant; and
 - (ii) installed by or for the tenant in connection with the permitted use, with the landlord's consent; and
 - (iii) that the tenant has the right to remove when this lease endsunless the landlord and the tenant agree otherwise in writing.

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- (f) the landlord and the tenant will co-operate with one another and with the valuer in providing access to the premises and to documents and information in their possession or under their control which the valuer considers relevant to the review;
- (g) subject to sub-clause (d), the valuer will provide the landlord and the tenant with a written determination within a reasonable time;
- (h) the determination must have reasons and set out matters taken into account in the making of it;
- (i) the determination will be final and binding on the landlord and the tenant;
- (j) if the rent has not been agreed or determined by a review date, the tenant will continue to pay the rent then current;
- (k) On the next day for payment of rent following the rent being agreed or the valuer's determination being provided any adjustment required will be made.

25. CPI adjustment of the rent

25.1 On each date specified in the Schedule (adjustment date) the rent will be adjusted in line with movements in the CPI using the formula -

R equals A multiplied by B divided by C

Where -

"R" is the adjusted rent payable from the adjustment date;

"A" is the rent payable immediately before the adjustment date;

"B" is the CPI for the quarter ended immediately before the adjustment date;

"C" is the CPI for the quarter ended immediately before the previous adjustment date or if there is no previous adjustment date, immediately before the commencement date.

25.2 If the CPI for the quarter ended immediately before the adjustment date is not published until after the adjustment date, the adjustment will be made as soon as possible following publication, with the adjustment taking effect on and from the adjustment date. Pending the adjustment, the tenant must continue to pay the rent then current. On the next date for payment of rent following the adjustment, any under payment or over payment will be paid or credited respectively, as the circumstances require.

25.3 If the base of the CPI is changed between the commencement date and the first adjustment date or between the adjustment dates any necessary alterations must be made to preserve the continuity of the calculations.

25.4 If the ABS ceases to publish the CPI the adjustment will be made using the index or other publication substituted for it, any changes being made to preserve the continuity of the calculations. If no index or publication is substituted, the landlord and tenant will agree on an alternative index or publication within 14 days of the adjustment date. If there is no agreement, either the landlord or the tenant or both will request the President of the REIV or his or her nominee (acting as an expert) to determine an appropriate index or publication which reflects changes in the cost of living at Melbourne. The determination will be final and binding.

26. Fixed rent increases

26.1 On each rent increase date specified in the Schedule the annual rent then payable will be increased by the stated percentage or amount.

26.2 On the next day for payment of rent following the rent being increased, the required adjustment will be made.

27. Damage to and destruction of the premises

27.1 If during the term or a period of over holding -

- (a) the premises or a part of the premises are totally or partly damaged or destroyed by any cause so as to be unfit for use and occupation by the tenant; and

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- (b) the event causing the damage or destruction was not caused or contributed to by the default of the tenant ;
and
- (c) any policy of insurance effected by the landlord has not been vitiated or payment or renewal refused as a result of an act, neglect, or default of the tenant -

then the rent and outgoings - or a fair and reasonable proportion having regard to the nature and extent of the damage or destruction or to any interference with the permitted use of premises by the tenant - will be suspended or cease to be payable, so long as the premises are unfit for occupation and use.

27.2 If there is a dispute about the proportion or the period of abatement the landlord and the tenant agree it will be referred to arbitration under the Commercial Arbitration Act 2011 and abatement will be in full satisfaction of all claims for damages by the tenant against the landlord.

27.3 Notwithstanding clause 27.2, if the premises are totally or substantially destroyed and not re-instated within 3 months from the date on which the destruction occurred the landlord or the tenant may by written notice elect to end this lease and from the date of the giving of the notice all claims under this lease, except for those which have arisen before that date, will be at an end.

28. Cessation of building services

Except in the case of voluntary withdrawal by the landlord or provided by the Act (if applicable), no damages, compensation or abatement of the rent will be claimed by the tenant or allowed by the landlord for the cessation of, damage to, or the failure or breakdown of any services provided in or to the building. "Services" include, but are not limited to, electricity, gas, water, sprinklers, alarms, pumps, air conditioning, heating, cooling or ventilation equipment, hot water service, cleaning, lifts or escalators.

29. Personal Property Security Act 2009 (PPSA)

- 29.1 The landlord and the tenant agree this lease is a security interest for the purposes of the PPSA.
- 29.2 The tenant will not register or allow or acquiesce in the registration of financing statement by any person, with the exception of the landlord, for goods provided by the landlord at or in connection with the premises.
- 29.3 The landlord may register a financing statement for a security interest arising because of this lease over goods provided by the landlord at or in connection with the premises, or the tenant's fixtures, fittings and/or goods not removed from the premises when this lease ends that are personal property.
- 29.4 The tenant waives the right to receive a notice in relation to registration events to which section 157(1)(a) of the PPSA applies.
- 29.5 The landlord and the tenant agree they will not disclose information in the nature of that referred to in section 275(1) of the PPSA.
- 29.6 When this lease ends and the tenant has vacated the premises and returned them to the landlord in the condition required by this lease (or as may be otherwise agreed in writing), or on an assignment in accordance with the terms of this lease the landlord will register a financing change statement for a security interest of the landlord, with the exception of a security interest registered for goods provided by the landlord at or in connection with the premises.
- 29.7 The tenant will sign all documents and do all things necessary to allow the landlord to register a financing statement and enforce its rights and meet its obligations under the PPSA and this clause. If the tenant is an individual, the tenant will provide his or her date of birth and a certified copy of his or her current driver's licence or birth certificate in confirmation. The landlord will not use the certified copy for any other purpose and will return it to the tenant on request.
- 29.8 The tenant will pay on demand the landlord's reasonable costs and expenses incurred in relation to or in connection with matters referred to in this clause.

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30. Indemnity by the tenant

The landlord will not be liable for any damage or injury to the premises or to the tenant or the tenant's property or to the property of the tenant's employees, contractors, agents, licensees or invitees as a result of any happening not attributable to the negligence of the landlord. To the extent permitted by law, the tenant indemnifies and agrees to keep the landlord indemnified in respect of and in connection with all claims, actions, suits, demands, judgements or costs arising from or related to such damage or injury.

31. Notices

31.1 A notice to be given by the landlord or the tenant is to be in writing and is to be dated and signed by the giver of it.

31.2 A notice is given to the party to whom it is addressed (recipient) by -

- (a) delivering it; or
- (b) posting it by pre-paid post; or
- (c) sending it by electronic communication (email)

to the address or to the email address (as the case requires) of the recipient, set out in the Schedule.

31.3 A notice that is delivered is given on delivery. But if delivery takes place outside normal business hours the notice is deemed given at 9:00 am on the next business day at the place of delivery.

31.4 A notice that is posted is given -

- (a) if posted by express post, on the next business day; or
- (b) if posted by priority post, on the fourth business day; or
- (c) if posted by regular post, on the sixth business day

after the day on which the notice is posted.

31.5 A notice sent by email is given when it first becomes capable of being retrieved as provided in section 13A (2) of the Electronic Transactions (Victoria) Act 2000. If that occurs outside normal business hours the notice is deemed given at 9:00 am on the next business day.

31.6 For the purpose of giving a notice -

- (a) "normal business hours" means between the hours of 9:00 am and 5:00 pm inclusive on a business day; and
- (b) "business day" means a day other than Saturday, Sunday or a day declared as a public holiday at the street address of the recipient set out in the Schedule.

32. Electronic Transactions (Victoria) Act 2000 (ETVA)

32.1 For the purposes of Part 2, Division 2, section 8 of the ETVA the landlord and the tenant acknowledge it is reasonable to expect that information or a notice or both to be given by either of them to the other by means of an electronic communication will be readily accessible so as to be useable for subsequent reference and consent to information or a notice or both being given to them by means of an electronic communication.

32.2 For the purpose of the giving of a notice which requires a signature and will be given in the body of or as an attachment to an email, the signature of the person to the notice will be a sufficient signature if typed in a legible font.

33. Rules

33.1 The landlord or the managing agent on behalf of the landlord may make rules or regulations or both for the management, use, or occupation of the Building or for all these purposes, but they must not be inconsistent with the rights of the tenant as set out in this Lease or the Act, if the Act applies.

33.2 The landlord or the managing agent on behalf of the landlord may revoke or alter rules or regulations or substitute other rules or regulations for those then current.

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33.3 The tenant will from time to time comply with the rules or regulations and rules of an owners corporation (if applicable) - whether original, altered or substituted - starting on the date of being given notice of them.

34. Defaults by the tenant

34.1 The landlord may terminate this lease by re-entry or forfeiture if the tenant fails to remedy a breach of this lease within 14 days after being given a notice complying with section 146(1) of the Property Law Act 1958, but no notice is required before re-entry or forfeiture in the case of non-payment of rent.

34.2 The tenant is in breach of this lease if -

- (a) the rent or outgoings or both are not paid on the due dates for payment although no legal or formal demand has been made; or
- (b) the tenant otherwise fails to observe and perform the covenants on its part to be observed and performed;
- (c) being a company -
 - (i) an order is made or a resolution passed for its winding-up, other than for the purposes of reconstruction or amalgamation; or
 - (ii) a provisional receiver, receiver, or receiver and manager is appointed; or
 - (iii) it is placed under official management; or
 - (iv) it goes into liquidation; or
 - (v) control of the company changes, without the prior written consent of the landlord, unless the tenant is a company listed on an Australian stock exchange in which case consent is not required;
- (d) the tenant fails to satisfy a judgement entered against it within the time specified in the judgement to do so;
- (e) the tenant being an individual commits an act of bankruptcy;
- (f) a guarantor of the tenant who is an individual commits an act of bankruptcy or, if the guarantor is a company, any of the matters set out in clause 34.2 (c) occurs.
- (g) the tenant ceases to use premises for the permitted use or permits or acquiesces in the premises ceasing to be used for the permitted use;
- (h) the tenant closes the premises during normal business hours for the permitted use or permits or acquiesces in the premises being closed for business during normal business hours for the permitted use;
- (i) the premises are unoccupied for a period exceeding 14 days during the term or a period of over holding.

34.3 If the landlord terminates this lease, the landlord may sue the tenant for unpaid monies or damages or both, including for damages representing the benefit of this lease receivable if the term had continued and expired by the passing of time.

35. Repudiation of this lease by the tenant

Clauses 1, 2, 3, 4, 5, 6, 9, 12, 14 and 16 are essential provisions of this lease. If the tenant breaches an essential provision it is a repudiation which the landlord may accept. If the landlord does not accept a repudiation of an essential provision it does not prevent the landlord accepting a subsequent repudiation of the same or another essential provision.

36. Disputes

36.1 A dispute must be resolved in accordance with Part 10 of the Act, if the Act applies.

36.2 A party to a retail tenancy dispute may be represented by a legal practitioner or practitioners of their choice, unless the dispute is one to which clause 36.3 applies.

36.3 A dispute between the tenant and another tenant or occupier of the Building about the use of the premises or the Building must be promptly referred by the tenant to the landlord or the landlord's managing agent for determination. Unless the Act applies, the determination of the landlord or the landlord's managing agent will be binding and the tenants or occupiers have no right to legal representation.

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36.4 In determining a dispute under clause 36.3, the landlord or the managing agent is not required to strictly comply with the rules of natural justice and the laws or rules of evidence do not apply and they may inform themselves as they see fit with the intent the dispute will be determined in a reasonable manner as speedily, informally, and inexpensively as possible.

37. Goods and Services Tax

37.1 "GST" means GST within the meaning of the A New Tax System (Goods and Services Tax) Act 1999 as amended (GST Act).

37.2 Expressions used in this clause 37 and the GST Act have the same meaning as in the GST Act.

37.3 Except where this Lease states otherwise, each amount payable by a party under this Lease in respect of a taxable supply by the other party is expressed as a GST exclusive amount and the recipient of the supply must, in addition to that amount and at the same time, pay to the supplier the GST payable in respect of the supply.

37.4 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 37.3 on account of the landlord's GST liability.

37.5 A party is not obliged, under clause 37.3, to pay GST on a taxable supply to it under this Lease, until given a valid tax invoice for the supply.

37.6 If during the term or period of over holding the landlord registers, or is required to be registered, for GST under the GST Act, then on and from the date the landlord registers, or is required to be registered, for GST under the GST Act clauses 37.3, 37.4 and 37.5 will apply to each amount payable by a party under this lease in respect of a taxable supply by the other party or an amount payable by the tenant in respect of a creditable acquisition.

38. Definitions and interpretation

In this Lease, unless otherwise required by the context or subject matter -

"ABS" means the Australian Bureau of Statistics or its successors.

"acquiesce in" / "acquiesced in" means the tenant has failed to take reasonable measures which, if taken, would have prevented the act, matter or thing which led to a breach of the tenant's obligations under this lease.

"Act" means the Retail Leases Act 2003.

"act of bankruptcy" has the meaning given in section 40 of the Bankruptcy Act 1966.

"bank guarantee" means a guarantee by an authorised deposit taking institution under the Banking Act 1959.

"building" means the building of which the premises forms a part.

"control" has the meaning given in section 50AA of the Corporations Act 2001.

"court" includes a tribunal.

"CPI" means the Consumer Price Index, Australia All Groups Index numbers for Melbourne as published by the ABS.

"electronic communication" has the meaning given in section 3 of the Electronic Transactions (Victoria) Act 2000.

"essential safety measure" has the meaning given in regulation 1202 of the Building Regulations 2006.

"information" when used in relation to an electronic communication has the meaning given in section 3 of the Electronic Transactions (Victoria) Act 2000.

"landlord" means the individual or corporation or incorporated association or one or more of them referred to in the Schedule and includes the assignees, executors, administrators, or successors of the landlord and the reversioner immediately expectant on the Term.

"REIV" means The Real Estate Institute of Victoria Ltd ACN 004 201 897 or its successors.

"sign" includes advertisement.

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"tenant" means the individual or corporation or incorporated association or one or more of them referred to in the Schedule and includes the executor, administrator, and permitted assignee of the tenant and where the context permits includes an employee, agent, contractor, licensee, or invitee of the tenant.

"then applicable Australian Standard" means that published by Standards Australia Limited ACN 087 326 690 or its successors.

"writing" includes all modes of representing or reproducing words, figures, or symbols in a visible form and expressions referring to writing are to be read accordingly.

If the landlord or the tenant or both comprise two or more individuals or corporations or incorporated associations the covenants and obligations their part apply to them jointly and to each of them individually.

No waiver by the landlord or the tenant of a breach of the terms of this lease by the other will operate as a waiver of another breach of the same or of another term, condition, or covenant.

References to an Act includes a reference to orders, declarations, ordinances, regulations, rules, by-laws, or guidelines made under it and to all amendments, modifications, re-enactments, consolidations, or replacements.

The singular includes the plural and vice versa.

The masculine gender includes the female and neuter genders.

If it is necessary to determine priority between the provisions of this lease, the priority is -

- the content, if any, of the Special Conditions Schedule; then
- the content of the Schedule; then
- the respective covenants of the landlord and the tenant.

This Lease is to be interpreted so it does not infringe Acts of the Commonwealth or Victorian Parliaments or any subordinate legislation made under them. If a provision does infringe, it will be read down, but only to the extent necessary, so it does not infringe and will otherwise remain operative, so far as possible in the circumstances. If it cannot be read down, it will be disregarded. If a provision is disregarded or held invalid by a court, the remainder of this Lease will continue in force.

Code 144A Copyright Commercial Lease Special Conditions Schedule

ABOUT THIS SCHEDULE

The REIV copyright Commercial Lease Special Conditions Schedule Code 144A is for use with the REIV copyright Commercial Lease Code 143 and REIV copyright Commercial Lease Schedule Code 144, if alterations or additions are to be made to the Code 143 or Code 144 documents. Ensure the completed Schedule is attached to each part of the lease, at the time the lease is signed.

REIV Copyright Commercial Lease Special Conditions Schedule©

Use this Schedule to record -

- changes to the wording of the numbered clauses of the REIV Copyright Commercial Lease Code 143; and
- matters agreed by the landlord and the tenant in addition to the terms and conditions of the REIV Copyright Commercial Lease Code 143; and
- changes to the printed, standard wording of the REIV Copyright Commercial Lease Schedule Code 144; and
- other matters which, because of lack of space, or for some other reason, cannot be properly recorded in the Schedule.

1. **Security system:** The tenant has, at its own cost, installed a security system inside and outside the premises, The security system shall be and remain at all times the property and responsibility of the tenant. The tenant shall be entitled to remove the security system from the premises and building at any time and must remove the security system from the premises and building on termination of the lease, unless otherwise agreed. On removal of the security system, the tenant shall rectify or cause to be rectified any damage to the premises or building in accordance with the requirements of clause 10 of the lease.
2. **Restricted access via side roller door:** The tenant acknowledges and agrees that access to the premises via the side roller doors may be restricted due to parking and access arrangements of other tenants in the building. The tenant agrees that such restricted access shall not constitute a breach of this lease and in particular shall not constitute a breach of the tenant's right to quiet enjoyment of the premises in accordance with clause 19 of the lease and access to the premises in accordance with clause 20 of the lease. The tenant agrees that it shall, where necessary, consult in good faith with the other relevant tenants of the building to secure access via the side roller doors. The landlord agrees to seek the co-operation of the other tenants of the building to facilitate the tenant's access to the premises via the side roller door when required.
3. **Car Parking:** The tenant acknowledges and agrees no permanent or designated car parking is attached to or associated with the premises. If at any time the car parking directly abutting the building (including the premises) (off the Bailey St entrance to the building) is designated by Council as allocated to the building for the exclusive use of the building occupants, the tenant agrees that it is entitled to the use of no more than half of the car park spaces directly abutting the building, or such lesser number as may be determined by Council.
4. **Noise:** Having regard to the nature of the business conducted by other tenants in the building, the tenant agrees it shall use the premises for storage and display only and shall not start up or run motorcycles or parts thereof within the premises or otherwise allow undue noise to emanate from the premises.

J M E
[Signature]
[Signature]
VT 01062016

5. **Essential Safety Measures:** It is agreed:

- a. The landlord and tenant will comply with all obligations arising from legislation or case law as to the provision and maintenance of Essential Safety Measures, including but not limited to record keeping and display, that may be required at the premises (*'ESM obligations'*), for the duration of the lease and any further terms.
 - b. The tenant shall immediately provide the landlord or the managing agent with written notice of any matter which, to the best of the tenant's knowledge and belief, may amount to a breach of the landlord and tenant's ESM obligations as defined above.
 - c. Subject to any relevant legislation and case law stating otherwise, the tenant shall be responsible for the reasonable cost of inspecting, reporting, maintaining and servicing all Essential Safety Measures at the premises, in accordance with the landlord's ESM obligations including, but not limited to, the servicing of fire protection equipment.
 - d. In the event that, with the landlord's written consent, the tenant changes its use of the premises from the permitted use listed in the lease Schedule, and the new use of the premises has any direct or indirect effect on the Essential Safety Measures required at the premises, the tenant will be solely responsible for all costs incurred directly or indirectly from such change of the use of the premises.
 - e. Immediately upon commencement of the initial term of this lease, and during any further terms of the lease, the landlord or its managing agent will enter into and keep in force a service agreement with a firm of contractors who specialise in the maintenance and service of essential safety measures including, but not limited to, firefighting equipment, emergency and exit lighting within the premises in accordance with the building regulations and the tenant will be liable to pay the reasonable costs associated with the maintenance agreement.
 - f. This lease will be subject to any changes to the relevant legislation and case law and in the event of an inconsistency between the terms of this lease and any of the relevant legislation and case law, the relevant legislation and case law shall prevail to the extent of the inconsistency, and this shall include any relevant legislation and case law which states the tenant will be liable for any or all costs of the landlord and the tenant's ESM obligations.
6. **Signage:** The tenant shall be permitted to place signage upon the premises, but signage shall only be permitted upon the premises with the written consent of the landlord in accordance with clause 11. The landlord will not unreasonably decline a request from the tenant to place signage on the premises, so long as all requests are approved by all relevant authorities including the council, body corporate, landlord and any other relevant party, and any necessary planning or building permits are obtained prior to works commencing. Any such works must be carried out by registered and suitably qualified tradespeople in accordance with current building codes.
7. **Applicable legislation:** The landlord and tenant agree this lease is subject to the *Retail Leases Act 2002 (Vic)*.
8. **Electrical overload:** The tenant will not, without the prior written consent of the landlord, install any electrical equipment on the premises which may overload the cables, switchboards or sub-boards through which electricity is conveyed to the premises.


2 June

REIV Lease Schedule

Landlord: Thelma Margaret Comben ABN 20 929 839 809 of Apartment 1:10, 1 Brewer Road, Brighton East, Victoria, 3187

Tenant: Doyle & Shields Pty Ltd ABN 84 004 921 233 trading as Doyle & Shields of 61 Williams Parade, Bairnsdale, Victoria, 3205

Premises: The premises known as 44A Bailey St (being ground floor, rear of 139-141 Main St) Bairnsdale, Victoria, 3875 and shown highlighted or hatched on attached plan

Term: Three years

Landlord's fixtures and chattels (if any): suspended ceiling, electricity meter, light fittings, plastered walls, painted walls

Further term(s) (CI 23): Two further terms of three years

Last date for exercise of option(s) (CI 23.1(d)): 31 January 2027, 2030

Commencement date of the next further term (CI 23): 1 May 2027

Commencing rent (CI 1): Rental of \$13,636.36 plus GST (if applicable), payable in instalments of \$1,136.36 plus GST (if applicable) calendar monthly in advance by direct debit.

Rent commencement date (CI 1): 1 May 2024

Landlord's loss of rent and outgoings insurance period (CI 2.1(h)): 12 months

Landlord's public liability insurance cover (CI 2.1(h)): \$10,000,000

Outgoings excluded (CI 2.1): Not applicable

Outgoings, manner of apportionment: Where separately assessed, 100% payable by tenant; otherwise, portions apply on the basis of lettable area as per clause 2.4.

The proportion that the lettable area of the premises bears to the lettable area of the building: 290m² : 950m² (estimated area – no survey to be conducted)

Building operating expenses, apportionment (CI 3.2(a)): Not applicable

Permitted use (CI 12.2): Storage and display of motorcycles and accessories

Security deposit (CI 16.1): One month's rent at all times, commencing \$1,136.36 plus GST (if applicable) unless otherwise agreed in writing

Market rent review dates (CI 24.1): 1 May 2027, 2030

CPI adjustment of rent dates (CI 25.1): 1 May 2025, 2026, 2028, 2029, 2031, 2032



ABOUT THIS SCHEDULE

The REIV copyright Commercial Lease Schedule Code 144 is a standard form document which forms part of the REIV copyright Commercial Lease (Code 143). The printed, standard wording may need to be altered when completing the Schedule to record a lease, as negotiated. **Alterations to the printed, standard wording should be recorded in the Special Conditions Schedule not by making changes to the Schedule itself.** Depending on circumstances, it may be prudent to obtain professional help when completing this Schedule. Ensure the completed Schedule is attached to each part of the lease, at the time the lease is signed.

LANDLORD ADVICE TO THE TENANT

The landlord advises the tenant this Schedule is in the copyright format published by The Real Estate Institute of Victoria Ltd as at the date printed/ version at the foot of the first page, unless there are alterations or additions or both which appear in the Special Conditions Schedule. The tenant is advised to check the Special Conditions Schedule, before signing this lease.

Date of this Lease: 09/05/2024

Landlord (1): Thelma Margaret Comben ABN: 20 929 839 809
Address: c/-27 Hamilton St, Brighton, Victoria Postcode: 3186
Telephone: Mobile: 0408 560 842
Email: lcomben11@gmail.com Contact person: Lisa Comben

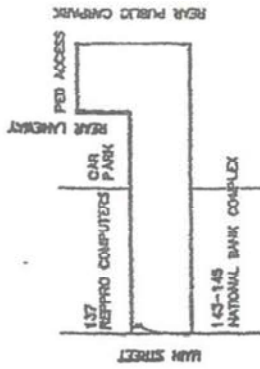
Landlord* (2): ABN: _____
Address: Postcode: _____
Telephone: Mobile: _____
Email: Contact person: _____

(* If there are more than 2 landlords, record the details of the additional landlords in the Special Conditions Schedule)

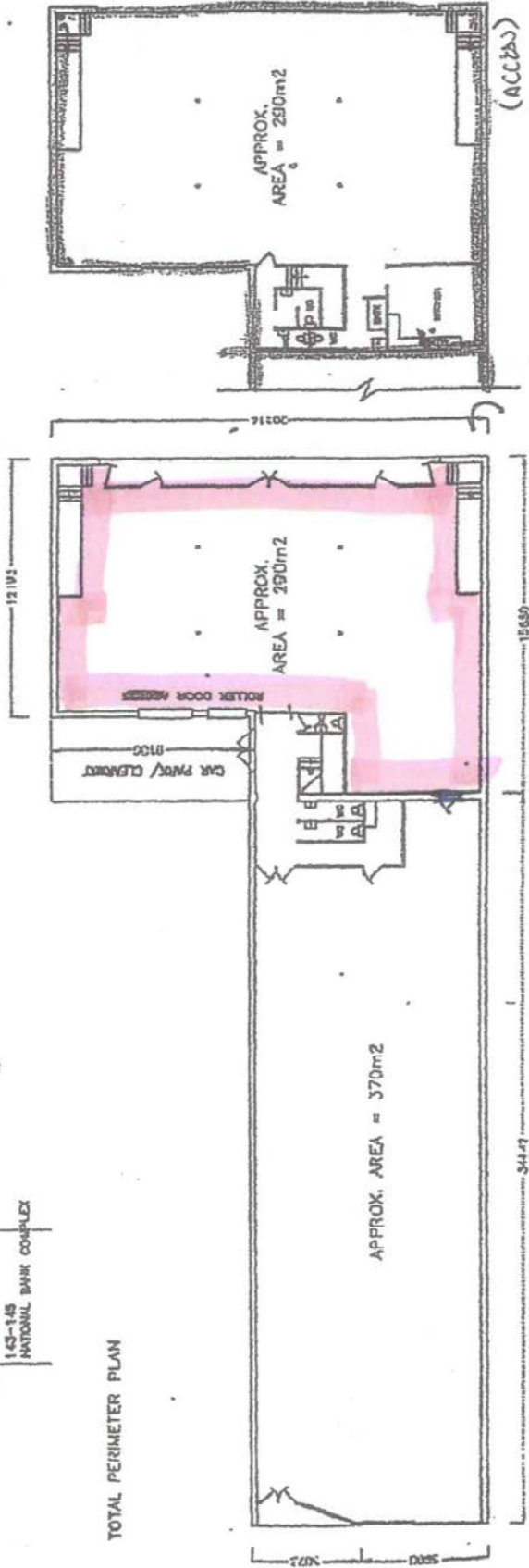
Tenant (1): Doyle & Shields Pty Ltd trading as Doyle & Shields ABN: 84 004 921 233
Address: 61 Williams Parade, Bairnsdale, Victoria Postcode: 3875
Telephone: 03 5152 4687 Mobile: _____
Email: sales@dsmc.net.au Contact person: Trevor Williams

Tenant* (2): ABN: _____
Address: Postcode: _____
Telephone: Mobile: _____
Email: Contact person: _____

(* If there are more than 2 tenants, record the details in the additional tenants in the Special Conditions Schedule)



TOTAL PERIMETER PLAN



FIRST FLOOR PLAN

GROUND FLOOR PLAN

NOTES & SPECIFICATIONS

LEGEND

J M e
J H

RJ Comben Properties

MAIN STREET, BAIRNSDALE
RETAIL PROPERTY NO. 139 - 141
FLOOR PLAN

DATE



DRAWING No.

SITE 139 - 141
PLAN A

Executed as a deed and if by a corporation in, the manner referred to in section 127 of the Corporations Act 2001.

Signed sealed and delivered by tenant company (1)

.....
Director

.....
Director / Company Secretary

in the presence of:

.....
Witness

***Signed sealed and delivered by tenant (1)**

(*only complete if the landlord is an individual)

.....
in the presence of:

.....
Witness

Signed sealed and delivered by tenant company (2)

.....
Director

.....
Director / Company Secretary

in the presence of:

.....
Witness

***Signed sealed and delivered by tenant (2)**

(*only complete if the tenant is an individual)

.....
in the presence of:

.....
Witness

Executed as a deed and if by a corporation in, the manner referred to in section 127 of the Corporations Act 2001.

Signed sealed and delivered by landlord company (1)

.....
Director

.....
Director / Company Secretary

in the presence of:

.....
Witness

***Signed sealed and delivered by landlord (1)**

(*only complete if the landlord is an individual)

John L Hathaway

Jim Cornham

.....
in the presence of:

JOHN L HATHAWAY

.....
Witness

Signed sealed and delivered by landlord company (2)

.....
Director

.....
Director / Company Secretary

in the presence of:

.....
Witness

***Signed sealed and delivered by landlord (2)**

(*only complete if the tenant is an individual)

.....
in the presence of:

.....
Witness

IMPORTANT REMINDER

Make sure this dated and signed document is securely attached to each part of the lease to which it applies, as soon as it has been signed by the guarantor(s).

GUARANTEE

1. In consideration of the landlord named in the attached Lease (lease) having agreed at the request of the guarantor named in the Schedule (guarantor) to enter into the lease with the tenant named in the lease (tenant), the guarantor **GUARANTEES** the performance by the tenant of all the terms, covenants and conditions contained in the lease and the punctual payment by the tenant to the landlord of the rent and all other monies payable by the tenant under the lease and all costs and damages which may be payable by the tenant on a default, repudiation or otherwise.

INDEMNITY

2. As a separate and independent obligation, the guarantor **INDEMNIFIES** the landlord and agrees to keep the landlord indemnified against all loss arising out of or relating to the lease including without limitation all losses, costs, charges, damages and expenses which the landlord may incur for or by reason of a default by the tenant or by reason of the termination of the lease for any reason and further agrees that any monies which are not recoverable for any reason (including without limitation disability, immunity, infancy, incapacity or any statute of limitations), whether or not the landlord knew or ought to have known, shall be recoverable from the guarantor as sole or principal debtor and shall be paid to the landlord on demand.

FURTHER AGREEMENTS BY THE GUARANTOR

3. The guarantor agrees the liability of the guarantor will not be abrogated, prejudiced or affected by –
 - (a) a postponement, forbearance or other concession granted to the tenant or to any other person nor any compounding for full or partial release or discharge of the tenant or any other person from liability under this guarantee and indemnity or from any other right of the landlord against the tenant or any compromise, abandonment, waiver, variation, relinquishment or renewal of the lease, any securities or assets or by any act, neglect or omission by the landlord in exercise of the powers or discretions vested in the landlord by or under the lease;
 - (b) a judgement against the tenant in any court or tribunal;
 - (c) the liquidation or act of bankruptcy of the tenant or any other person;
 - (d) any other person or corporation whether or not named in this guarantee and indemnity giving or failing to give an indemnity or guarantee of the tenant's obligations to the landlord;
 - (e) the liability of the tenant ceasing for any cause or any indemnity, guarantee or security to secure the obligation being released or discharged or being void, defective or informal;
 - (f) an assignment by the tenant of its legal or equitable interest in the lease to another person or corporation;
 - (g) any alteration, variation, addition, or modification to or of the lease or this guarantee and indemnity and whether or not the lessee or the guarantor or the both of them have specifically agreed or consented;
 - (h) the failure or omission by the landlord to give notice to the guarantor of any default by the tenant under the lease; or
 - (i) anything else which under the law relating to sureties would, but for this provision, have the effect of releasing the guarantor.
4. This guarantee and indemnity is a continuing guarantee and indemnity and will remain in full force and effect until the full amount for which the guarantor is liable under the lease has been paid to the landlord and will be enforceable by the landlord without first taking any steps or proceedings against the tenant. Notwithstanding the termination or expiration of the lease, the landlord may determine if and when it will enforce or refrain from enforcing this guarantee and indemnity.
5. The liability of the guarantor under this guarantee and indemnity extends to all amounts which –
 - (a) may be payable by the tenant to the landlord for any period during which the tenant overholds under the lease or otherwise remains in occupation of the premises notwithstanding that the term has expired or may have been terminated;
 - (b) may be payable by the tenant to the landlord under an equitable lease which may arise on the exercise by the tenant of an option for a further term contained in the lease; or
 - (c) the landlord has been paid by the tenant but which the landlord is obliged to repay on the ground of preference or otherwise.

6. The guarantor covenants that there is a benefit accruing to the guarantor as a result of the landlord entering into the lease with the tenant.
7. Any notice required or permitted under this guarantee and indemnity will, in addition to any other method prescribed by law, be deemed to have been validly given in accordance with the notice provisions in clause 31 of the lease and clause 32 of the lease is incorporated mutatis mutandis into this guarantee and indemnity.
8. It is the intention of the parties that where the context so admits –
 - (a) the singular includes the plural and vice-versa;
 - (b) the use of one gender includes the other genders;
 - (c) the expressions "guarantor", "landlord" and "tenant" when used in reference to an individual or individuals, will be deemed to include and also refer to his, her or their respective heirs or personal representatives and transferees and when used in reference to a corporation will be deemed to include and also refer to the successors and permitted assignees of the corporation;
 - (d) the expression "landlord" will also include the registered proprietor or proprietors from time to time of the premises referred to in the lease;
 - (e) a reference to "liquidation" includes official management, receivership, appointment of an administrator, deregistration, winding-up, dissolution, assignment for the benefit of or compromise, arrangement, composition or moratorium with creditors generally or any class of creditors, deed of company arrangement, scheme of arrangement, insolvency, bankruptcy or similar procedure or, where applicable, changes in the constitution of any partnership or person or death;
 - (f) if there is more than one guarantor, the liability of the guarantors is joint and individual.

SCHEDULE

Guarantor (1) Trevor James Williams

Name:
(insert name in full)

Residential address: 61 Williams Parade, Bairnsdale, Victoria Postcode: 3875
(Post office box not acceptable)

Email address:

Guarantor (2) Jan Meredith Williams

Name:
(insert name in full)

Residential address: 61 Williams Parade, Bairnsdale, Victoria Postcode: 3875
(Post office box not acceptable)

Email address:

EXECUTED by the guarantor as a deed and dated 3 15 2024

Signed sealed and delivered by Guarantor (1) [Signature])

in the presence of: [Signature])
 (witness)

LACHLAN JOHN WILSON
 (print name)

Signed sealed and delivered by Guarantor (2) [Signature])

in the presence of:)
 (witness)

.....
 (print name)

Deed of Renewal of Lease

Date: 26/11/24

THELMA MARGARET COMBEN ABN 20 929 839 809

and

**KELLY-MARIE ASMUS-ALBORNOZ TRADING AS ALBATROSS PHOTOGRAPHY &
DESIGN ABN 81 604 411 826**

Premises: 44B Bailey Street, Bairnsdale, Victoria

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Deed of Renewal of Lease

Date:

PARTIES

THELMA MARGARET COMBEN ABN 20 929 839 809 of Apartment 1:10, 1 Brewer Road, Brighton East, 3187 Victoria (*Lessor*)

and

KELLY-MARIE ASMUS-ALBORNOZ (ABN 81 604 411 826) trading as ALBATROSS PHOTOGRAPHY & DESIGN of 83 McKean St, Bairnsdale, 3875 Victoria (*Lessee*)

RECITALS

- A. By a lease made between the Lessor and the Lessee dated 31 January 2024 and commencing 1 February 2024 (*Lease*), a copy of which is annexed to this lease in Annexure A, the Lessor leased to the Lessee the premises known as 44B Bailey St, Bairnsdale, Victoria and shown in Annexure B (*Premises*) on the terms and conditions more particularly specified in the Lease.
- B. The Lessee seeks to exercise an option, renewing the Lease for a further term of one year, commencing on 1 February 2025 (*Renewal Date*) on the same terms and conditions contained in the Lease subject to the variations set out in this deed.

DEED

1. INTERPRETATION

- (a) Words defined in the Lease have the same meaning in this deed, unless varied by this deed.
- (b) Clause 1.2 of the Lease applies to the Interpretation of this deed unless the context otherwise requires.

2. RENEWAL AND VARIATION

2.1 Grant

In consideration of the rental reserved by and of the Lessee's obligations under this deed, the Lessor leases to the Lessee the Premises for the term and at the rental described in this clause 2.

2.2 Renewal and Variation

With effect on and from the Renewal Date, the Lessor and the Lessee agree that the Lease is renewed on the same terms and conditions contained in the Lease as if all the provisions were repeated in this deed, subject to the following variations:

- (a) in the Schedule, at **Term** delete "2024" and replace with "2025";
- (b) in the Schedule, at **Further terms** delete "Two (2) further term of one (1) year" and replace with "One (1) further term of one (1) year";
- (c) in the Schedule, at **Last day for exercise of option(s)** delete "2024,";
- (d) in the Schedule, at **Commencement date of the next further term**, delete "1 February 2025" and replace with "1 February 2026";
- (e) in the Schedule, at **Rent commencement date**, (to avoid doubt, also the **commencement date**) delete "1 March 2024 (following one month rent-free period from 1 February 2024" and replace with "1 February 2025";
- (f) in the Schedule, at **Permitted Use**, add "and such other consistent uses specifically consented to in writing by the landlord in respect of any sub-lease under this lease,";
- (g) in the Schedule, at **Security Deposit**, delete the reference to "\$870.84" and replace with "\$791.66", such that (to avoid doubt) the commencing amount including GST is \$870.84; and
- (h) in the Schedule, at **CPI adjustment of rent dates**, omit the reference to "2025,".

3. CONFIRMATION AND PERFORMANCE

3.1 Confirmation

- (a) To the extent, if any, that a variation of the Lease constitutes a surrender of the Lease at law, the parties agree that the Lessor grants and the Lessee accepts a further lease of the Premises in respect of the variation effected by **clause 2.2**, with effect from the Renewal Date on the terms of the Lease as varied by this deed.
- (b) The Lessor and the Lessee confirm the Lease, as renewed and varied by this deed, remains in full force and effect.
- (c) The Lessor and Lessee agree the plan of the Premises in Annexure B sets out approximate measurements and no survey will be carried out.

3.2 Performance

The Lessor and the Lessee agree to comply with the provisions of the Lease on and from the Renewal Date as if all the provisions were repeated in this deed, subject to the variations set out in **clause 2.2**.

4. COSTS

Each party must pay its own costs in relation to the preparation, negotiation, execution and stamping of this lease except that the Lessee must pay any stamp duty assessed on this lease.

5. GENERAL

5.1 Co-operation

Each party must do anything (including execute any document) to give effect to this deed and to the transactions contemplated by it and must ensure that its employees and agents do anything (including execute any document) that the other party may reasonably require to give full effect to this deed.

5.2 Counterparts

This deed may be signed in any number of counterparts and all such counterparts taken together will be deemed to constitute one and the same document.

5.3 Successors and assigns

This deed will be binding on and continue for the benefit of each party, its successors and permitted assigns.

5.4 Applicable law

This deed is governed by and construed in accordance with the laws of the State of Victoria and the Commonwealth of Australia and the parties submit to the jurisdiction of the courts of that State and Commonwealth of Australia.

5.5 Inconsistency

If this deed is inconsistent with the Lease or with any other document or agreement between the parties, this deed prevails to the extent of the inconsistency.

5.6 Severance

If any part of this deed is invalid, unenforceable, illegal, void or voidable for any reason, this deed will be construed and be binding on the parties as if the invalid, unenforceable, illegal, void or voidable part had been deleted from this deed or read down to the extent necessary to overcome the difficulty.

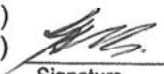
6. RETAIL LEGISLATION

If any legislation governing retail premises or tenancies applies to this deed, then that legislation prevails over any inconsistent provisions in this deed.


EXECUTED AS A DEED

DATED this 26TH day of November 2024

SIGNED SEALED AND DELIVERED by
KELLY-MARIE ASMUS-ALBORNOZ in
the presence of:

)
)
) 

Signature

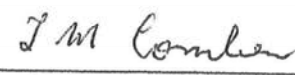


Signature of witness




Name of witness (please print)

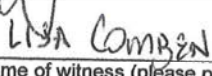
SIGNED SEALED AND DELIVERED by
THELMA MARGARET COMBEN in the
presence of:

)
)
) 

Signature



Signature of witness



Name of witness (please print)

ANNEXURE A

LEASE



Code 143

Commercial Lease®

The Real Estate Institute of Victoria Ltd | ACN 004 210 897 | www.reiv.com.au |

The Real Estate Institute of Victoria Ltd
COPYRIGHT COMMERCIAL LEASE®

Landlord(s): TM Comben ABN 20 929 839 809

Tenant(s): Kelly-Marie Asmus-Albornoz ABN 81 604 411 826 trading as Albatross
Photography & Design

Premises: 44B Bailey St (being upstairs, rear of 139-141 Main St)
Bairnsdale, Victoria, 3875

Commercial Lease[®]

ABOUT THIS LEASE

This is a standard form document. It can be used in the letting of retail, commercial or industrial premises in Victoria, whether or not retail lease laws apply. It may need to be altered or added to or both to properly record a lease, as negotiated. **Alterations, additions or both should be recorded in the Special Conditions Schedule not by making changes or additions to the Lease itself.** Depending on circumstances, it may be prudent to obtain professional help when drawing up this Lease. The REIV Copyright Commercial Lease Schedule (Code 144) must be completed in conjunction with this Lease.

Landlord advice

The landlord confirms this lease is in the copyright format published by The Real Estate Institute of Victoria Ltd as at the date/version printed on the front page, unless there are alterations or additions or both which appear in the Special Conditions Schedule. The tenant should check the Special Conditions Schedule, before signing this lease.

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Commercial Lease[®]

This lease is made between the landlord and the tenant named in the Schedule for the premises for the term beginning on the commencement date as specified in the Schedule.

This lease comprises -

- the respective covenants of the landlord and the tenant; and
- the Schedule; and
- the Special Conditions, if any, in the Special Conditions Schedule.

If the Act applies, this lease has effect subject to it.

The tenant covenants and agrees with the landlord as follows -

1. Rent

- 1.1 To pay the rent in advance during the term and any over-holding by equal, consecutive calendar monthly instalments starting on the rental commencement date specified in the Schedule and then on the first day of each month, unless otherwise agreed. The first and the final payments of the rent will be apportioned, if necessary.
- 1.2 Each instalment of rent will be paid -
 - (a) without demand, deduction, or set-off (whether legal or equitable); and
 - (b) in the manner required by the landlord from time to time.

2. Outgoings

- 2.1 During the term and any over-holding to pay on or before the due date for payment, or to repay to the landlord within 14 days of demand, the following outgoings in connection with the premises -
 - (a) municipal, water, drainage, and sewerage rates, charges, levies and special rates or levies;
 - (b) land tax calculated on the basis the premise or the building of which the premises forms a part is the only land owned by the landlord (single holding);
 - (c) congestion and parking levies;
 - (d) gas, electricity, telephone, communications, sewage or garbage/waste disposal, and water consumption charges;
 - (e) owners corporation fees, special fees and charges;
 - (f) the expense of cleaning, inspecting, maintaining, repairing and/or servicing the premises and the landlord's fixtures, fittings, plant or equipment in or serving the premises;
 - (g) fire service levies;
 - (h) insurance premiums and other charges for insurances effected by the landlord in relation to the premises including (but not limited to) fire insurance on all improvements on a replacement and reinstatement basis and such other risks as the landlord may require from time to time and whether or not the risk is one in respect of which insurance is commonly obtainable at the commencement of this lease. The insurances may include plant and equipment breakdown insurance, public liability insurance for the amount of cover specified in the Schedule, loss of rent and consequential loss insurance and any other insurance effected by the landlord in relation to any risk relating to the landlord's ownership or interest in the premises. The landlord may insure for such amounts and with such extensions and exclusions as the landlord thinks fit, but if the Act applies the landlord is not entitled to recover any premiums or other charges which the landlord may be prohibited from claiming from the tenant under the Act;
 - (i) the expense of the attendance of the fire brigade in response to a fire alarm generated from or in connection with the premises;
 - (j) the expense of inspecting, auditing, servicing, repairing, maintaining, monitoring, and testing all essential safety measures at or provided in relation to or in connection with the premises, provided the payment or repayment is not contrary to law; and