

Store Lease

Store #Store#, Wholesale Fruit and
Vegetable Market

Melbourne Market Authority (**Landlord**)

[To be inserted] (**Tenant**)

MinterEllison

L A W Y E R S

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Annexure A

Annexure B

Annexure C

Information table

Date

Parties

Name	Melbourne Market Authority
ABN	56 160 141 887
Short form name	Landlord
Notice details	542 Footscray Road, West Melbourne, Melbourne, Victoria 3003 Facsimile: (03) 9687 7714 Attention: Chief Executive Officer

Name	[To be inserted]
ABN	[To be inserted]
Short form name	Tenant
Notice details	[To be inserted] Facsimile: [To be inserted] Attention: [To be inserted]

Items

Item 1

Premises (clause 1.1)

Store and office number [insert] being part of the Trading Floor Complex as shown, for identification purposes only, on the plan in Annexure A (excluding the areas marked 'Display Area' and 'Sorting Area' on the plan), the boundaries of which are:

- (a) the centreline of any inter-tenancy walls and the inside finished surface of all other external walls (ignoring any false walls installed by or for the Tenant) and the inside surface of any windows in them;
- (b) the outside finished surface of any storefront;
- (c) the lower surface of the upper ceiling (above any false or suspended ceiling); and
- (d) the median of the floor.

The notional area of:

- (a) a large store is 193 square metres, with an office area of 97 square metres;
- (b) a medium store is 112 square metres, with an office area of 35 square metres; and
- (c) a small store is 56 square metres, with an office area of 17 square metres.

Item 2

Commencement Date (clause 1.1)

Item 3

Termination Date (clause 1.1)

Item 4

Term (clause 1.1)

_____ years, starting on the Commencement Date and ending on the Termination Date

Item 5

Rent (clause 1.1)

\$ _____ plus GST during the first year of the Term

Item 6

CPI Review Dates (clause 1.1)

On each anniversary of the Commencement Date of this lease

Item 7

Permitted Use of the Premises (clause 1.1)

Wholesale sale of fruit and vegetables and ancillary office

Item 8

Particulars of lease for option lease (clause 20)

Term: _____ years

Commencement Date:

Termination Date:

CPI Review Dates: On each anniversary of the Commencement Date of this lease

Term: years

Commencement Date:

Termination Date:

CPI Review Dates: On each anniversary of the Commencement Date of this lease

Item 9

Maximum services capacity

(a) Maximum electricity capacity for the Premises:

Large trading store – 63 AMP 3 phase

Medium trading store – 50 AMP 3 phase

Small trading store – 25 AMP 3 phase (shared)*

* based on an equal split for two small stores in a single medium store, with a maximum capacity of 50 AMP 3 phase.

(b) Maximum refrigeration plate heat exchanger capacity for the Premises:

Large trading store – 124 kW

Medium trading store – 70 kW

Small trading store – 35kW (shared)*

* based on an equal split for two small stores in a single medium store, with a maximum capacity of 70 kW

(c) Maximum heating hot water capacity for Premises:

Large trading store – 8.2 kW

Medium trading store – 4.4 kW

Small trading store – 2.2 kW (shared)*

* based on an equal split for two small stores in a single medium store, with a maximum capacity of 4.4 kW

Item 10

Maximum load limits

(a) Floor loading capacity for the ground floor of the Premises:

(i) Racking post load: 5 tonnes

(ii) Forklift loads (with unlimited repetitions): 5 tonnes

(b) Floor loading capacity for the first floor of the Premises:

(i) Mezzanine office floor and associated walkway load: 2.7 KN

(ii) Office live load: 3 kPa

(iii) Compactus (specific loading area) load over a nominal 4 metre x 1 metre area noted on the plans in Annexure A: 10 kPa

(c) Roof capacity:

- (i) Live load: 0.25 kPa
- (ii) Super imposed dead load: 0.17 kPa

Background

- A The Head-Landlord is the owner of the Premises.
- B The Landlord occupies the Premises as tenant under the Head-Lease.
- C The Landlord sub-leases the Premises to the Tenant on the terms contained in this lease.

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In this lease:

Act means the *Melbourne Market Authority Act 1977* (Vic).

Authority means any government or any governmental, semi-governmental, city, municipal, civic, administrative, fiscal, statutory or judicial body, instrumentality, department, commission, authority, tribunal, agency or other similar entity.

Bank Guarantee means an unconditional undertaking by an Australian bank to pay on demand the Security Amount with an expiry date no earlier than 6 months after the end of the Term and otherwise on terms acceptable to the Landlord, including any addition or replacement to it under clause 17.

Business Day means a day which is not a Saturday or a Sunday or a public holiday in Melbourne.

Central Cooling Plant means the Landlord's plant and equipment which provide refrigerant cooling services to the Trading Floor Complex.

Central Heating Plant means the Landlord's plant and equipment which provide heating hot water services to the Trading Floor Complex.

Claim includes:

- (a) all Cost, expense, liability, damage and loss;
- (b) actions, applications, causes of action, arbitrations, claims, demands, orders and judgments;
- (c) debts, damages, penalties, payments and Costs (including legal costs calculated on an own client basis);
- (d) the purported rescission or termination of this lease; and
- (e) an adjustment to money due to the Landlord under this lease.

Commencement Date means the date stated in Item 2.

Common Area means those areas of the Market Land provided by the Landlord from time to time for the common use of occupants of the Market Land and includes without limitation the entrances, lobbies, corridors, toilets, stairways, areas designated by the Landlord for parking of cars, trucks and other vehicles and loading and unloading vehicles, driveways, access and egress roads, and other common amenities other than those reserved to the Landlord or to any person claiming through or authorised by the Landlord.

Costs includes fees, expenses and legal costs calculated on a solicitor and own client basis.

CPI means the consumer price index published by the Australian Bureau of Statistics under the heading 'All Groups - Eight Capital Cities', or if the Australian Bureau of Statistics stops publishing the CPI, then CPI means the index recommended by the Property Council of Australia Limited as the index that most appropriately replaces the CPI.

CPI Rate means the change in the CPI, measured from the CPI for the quarter ending immediately before the last date on which the Rent was reviewed (or the Commencement Date if

there has been no intervening rent review) to the CPI for the quarter ending immediately before the relevant CPI Review Date, expressed as a percentage.

CPI Review Date means each date specified in Item 6.

Environmental Management Plan means the Landlord's environmental management plan, if any, for the Market Land, to the extent that a copy has been made available to the Tenant.

Essential Safety Measure has the meaning given in the *Building Regulations 2006* (Vic).

GST means GST within the meaning of the GST Act.

GST Act means a *New Tax System (Goods and Services Tax) Act 1999* (Cth).

Head-Landlord means the Secretary to the Department of Business and Innovation, a body corporate established under section 41A of the *Project Development and Construction Management Act 1994* (Vic), and includes any successors and assigns.

Head-Lease means the lease dated 4 April 2013 between the Head-Landlord as landlord and the Landlord as tenant in respect of Market Land and includes any further lease or proprietary interest in the Market Land granted by the Head-Landlord to the Landlord.

Information table means the part of this document described as the Information table.

Insolvency Event means when the Tenant:

- (a) is insolvent within the meaning of section 95A of the *Corporations Act 2001* (Cth);
- (b) is presumed by a court to be insolvent by reason of section 459C(2) of the *Corporations Act 2001* (Cth);
- (c) has a liquidator or provisional liquidator appointed in respect of it;
- (d) has an administrator appointed over all or substantially all of its assets or undertaking (and whose appointment is not withdrawn within five Business Days);
- (e) has a receiver, receiver and manager or other controller within the meaning of section 9 of the *Corporations Act 2001* (Cth) or similar officer appointed to all or substantially all of its assets or undertaking (and whose appointment is not withdrawn within five Business Days);
- (f) except to reconstruct or amalgamate while solvent, has an application or order made, a resolution passed, an application to a court made or other steps taken against or in respect of it (other than frivolous or vexatious applications or steps or an application withdrawn or dismissed within 20 Business Days) for its winding up or dissolution or for it to enter an arrangement, compromise or composition with or assignment for the benefit of its creditors, a class of them or any of them; or
- (g) admits in writing that it is, or is declared to be, insolvent or unable to pay all of its debts when they become due and payable.

Insurance Bond means an irrevocable and unconditional undertaking by an insurance company conducting business in Melbourne, Australia to pay on demand the Security Amount with an expiry date no earlier than 6 months after the end of the Term or otherwise on terms acceptable to the Landlord, including any addition or replacement to it under clause 17.

Item means an item appearing in the Information table.

Landlord includes the Landlord's successors and assigns or, if the Landlord is a natural person, the Landlord's executors administrators and assigns and in either case the Landlord's Employees as the context permits.

Landlord's Agent includes each of:

- (a) the State; and
- (b) the Landlord's Employees.

Landlord's Employees includes the Landlord's employees, agents, consultants or contractors, or invitees, but excludes the Tenant and the Tenant's Agents.

Landlord's Fixtures includes, but is not limited to:

- (a) all plant and equipment, mechanical or not mechanical, fixtures and furnishings of whatever nature (including the roller doors located in the Premises); and
- (b) light fittings; and
- (c) those items set out in Schedule 1,

in the Premises at the Commencement Date or from time to time supplied by the Landlord.

Law means any statute, regulation, proclamation, ordinance or by law of the Commonwealth of Australia or the State and includes all statutes, regulations, proclamations, ordinances or by laws varying consolidating or replacing them and all regulations, proclamations, ordinances and by laws issued under that statute.

Licensed Area has the meaning given in clause 21.1.

Market Land means the land coloured red and shown cross-hatched and hatched, and described as the 'Market Land', 'Carriageway Access' and 'First Flush Facility', on the plan in Annexure C.

Market Review Date means the commencement date of any new lease granted pursuant to clause 20.

OH&S Plan means the Landlord's occupational health and safety plan, if any, for the Market Land, to the extent that a copy has been made available to the Tenant.

Operating Rules means any rules, guidelines or policies issued by the Landlord in respect of the Market Land from time to time, to the extent that they have been made available to the Tenant.

Permitted Use means the use in Item 7.

PPSA means the *Personal Property Securities Act 2009* (Cth).

PPS Lease has the meaning given by section 13 of the PPSA.

Premises means:

- (a) the premises described in Item 1; and
- (b) the Landlord's Fixtures.

Produce means fruit and vegetables and any other products which are approved by the Landlord (in writing) for sale from the Premises.

Rent means the amount stated in Item 5, as varied in accordance with the provisions of this lease.

Requirement means any requirement, notice, order or direction received from or given by any Authority applying to the Premises.

Retail Act means the *Retail Leases Act 2003* (Vic).

Review Date means each date that is a CPI Review Date or Market Review Date.

Security means any or all of:

- (a) a charge, mortgage, lien or pledge; or
- (b) a security interest within the meaning of the PPSA.

Security Amount means the amount equal to 6 months' Rent and GST.

Services means the services provided by Authorities, the Landlord or others to the Premises, including (if provided) electricity, gas, water, sewerage, oil, internet access, building intelligence facilities and communications together with all plant and equipment relating to those services.

Specified Rate means interest at the rate of two percent higher than the rate for the time being fixed under section 2 of the *Penalty Interest Rates Act 1983* (Vic).

Specified Repair Work has the meaning given in clause 9.9.

State means the State of Victoria.

Tenant includes:

- (a) if the Tenant is a body corporate, the Tenant's successors and assigns approved by the Landlord;
- (b) if the Tenant is a natural person, the Tenant's executors and administrators and assigns approved by the Landlord; and
- (c) except for the purposes of clause 2.1(a) and as the context permits, the Tenant's Agents.

Tenant's Agents means each agent, contractor, employee, invitee, licensee, sub-contractor and sub-tenant of the Tenant and any other person claiming through or under the Tenant.

Tenant's Fixtures includes all fixtures, fittings, plant, equipment and other articles (including cool rooms and refrigeration plant) in or on the Premises in the nature of trade or any previous occupier's fixtures and chattels which are not Landlord's Fixtures, and includes anything installed or placed in or on the Premises by or for the Tenant (whether financed or not).

Tenant's Post Box means the post box at the Market Land nominated by the Landlord, from time to time, for the Tenant's use.

Term means the term of this lease set out in Item 4.

Termination Date means the date stated in Item 3.

Trading Floor Complex means the market trading floor complex and the Landlord's administration offices constructed on part of the Market Land, as shown on the Trading Floor Complex Plan, and includes:

- (a) all structures, Services, the Central Heating Plant, the Central Cooling Plant and Common Area situated on the Market Land owned, occupied or controlled by the Landlord; and
- (b) any additions and alterations to the Trading Floor Complex.

Trading Floor Complex Plan means the plan of the Trading Floor Complex attached as Annexure B.

Trading Hours means the trading hours permitted by the Act, the Operating Rules or as prescribed by the Landlord from time to time.

Valuer means a valuer who:

- (a) is a full member (Associate or Fellow) of the Australian Property Institute – Victorian Division of not less than 5 years standing;

- (b) has been recognised by the Australian Property Institute – Victorian Division as a certified practising valuer; and
- (c) is experienced in valuing investment grade industrial property.

1.2 Interpretation

In this lease, unless the context otherwise requires:

- (a) headings and underlinings are for convenience only and do not affect the interpretation of this lease;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include any gender;
- (d) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any Authority;
- (e) a reference to any thing includes a part of that thing;
- (f) a reference to a part, clause, party, information table, annexure, exhibit or schedule is a reference to a part and clause of and a party, information table, annexure, exhibit and schedule to this lease;
- (g) where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next succeeding day which is a Business Day;
- (h) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this lease or any part of it;
- (i) a covenant or agreement on the part of two or more persons binds them jointly and severally; and
- (j) a reference to any legislative instrument includes any re-enactments and amendments of that instrument from time to time.

2. Grant

2.1 Grant of lease

The Landlord:

- (a) leases the Premises to the Tenant; and
- (b) grants to the Tenant the right to use the Common Area in common with other persons entitled to use them,

on the terms and conditions contained in this lease.

2.2 Landlord's reservations

- (a) The Landlord reserves the right to:
 - (i) use the exterior walls and the roof of the Premises;
 - (ii) install, inspect, maintain, repair, alter, remove and replace pipes, ducts, air-conditioning equipment, conduits, wires, cables and fibres leading through the Premises;
 - (iii) pass and run water, air, electricity, sewerage, drainage, gas and other services through the pipes, ducts, conduits, wires, cables and fibres; and
 - (iv) enter and remain in the Premises for the purposes stated in clause 2.2(a)(ii).

- (b) The Landlord may enter and remain in the Premises under clause 2.2(a)(ii) at all reasonable times on giving the Tenant reasonable notice (except in the case of emergency when no notice is necessary and the entry may be at any time). In doing so, the Landlord must cause as little inconvenience to the Tenant as is practicable in the circumstances.

3. No warranty as to use

- (a) The Landlord gives no warranty (either present or future) as to:
 - (i) the suitability of the Premises or the Trading Floor Complex or the use to which the Premises or the Trading Floor Complex may be put; and
 - (ii) the design, quality or durability of any coating applied to or that forms part of the floor of the Premises or the Trading Floor Complex.
- (b) The Tenant:
 - (i) accepts this lease with full knowledge of and subject to any prohibitions or restrictions on the use of the Premises from time to time under any Law or Requirement; and
 - (ii) must obtain, maintain and comply with at its Cost any consent or approval from any Authority necessary or appropriate for the Tenant's business under any Requirement or Law.
- (c) The Tenant may not make any Claim because of or in respect of any matter specified in or contemplated by this clause 3.

4. Term of Lease and holding over

4.1 Term of this lease

The Term commences on the Commencement Date and expires on the Termination Date, subject to the provisions of this lease.

4.2 Holding over

If the Tenant occupies the Premises after the Termination Date (other than pursuant to the grant of a further lease), without objection by the Landlord:

- (a) the Tenant must do so as a monthly tenant for monthly terms thereafter on the same terms and conditions as this lease as far as they apply to a monthly tenancy;
- (b) either party may end the tenancy by giving one month's written notice to the other, expiring at any time;
- (c) the monthly rent starts at one twelfth of the Rent which the Tenant was paying immediately before the Term ended increased by 4%; and
- (d) the Landlord may further increase the monthly rent by giving the Tenant one month's written notice.

5. Tenant's financial obligations

5.1 Tenant's covenant

The Tenant must pay the Rent to the Landlord during the Term.

5.2 Payment of Rent

The Rent must be paid:

- (a) by monthly instalments in advance;
- (b) on the first day of each month during the Term commencing on the Commencement Date;
- (c) with each payment equal to one twelfth of the Rent (excluding the first and last payment which must be proportionate, if necessary); and
- (d) to the Landlord:
 - (i) at the address set out in the Information table or to any other payee or address as notified in writing by the Landlord to the Tenant; and
 - (ii) in the manner contemplated under clause 5.6(c).

5.3 Other expenses

In addition to the Rent, the Tenant must pay all rates, taxes, charges, Costs and other expenses set out in Schedule 2 at the time and in the manner set out in Schedule 2.

5.4 Payment of Landlord's Costs

The Tenant must pay on demand the Landlord's reasonable Costs of and incidental to:

- (a) any actual or proposed consent required under this lease;
- (b) any actual or proposed assignment or sub-letting of the Premises;
- (c) any actual or proposed change, surrender or ending of this lease except at the end of the Term or where the change occurs at the Landlord's request;
- (d) the exercise or attempted exercise by the Landlord of any right or remedy against the Tenant;
- (e) any breach of this lease by the Tenant; and
- (f) any document setting out the adjustment in the Rent under this lease.

5.5 Interest on overdue money

- (a) The Landlord may require payment of interest on any money due but unpaid by the Tenant to the Landlord, despite any failure by the Landlord to have previously required payment of interest.
- (b) If the Landlord requires payment of interest under clause 5.5(a), interest will be calculated at the Specified Rate on the amount due but unpaid daily from and including the due date for payment up to and including the date on which the Landlord receives payment of the amount.

5.6 Time and method for payments

- (a) Where a time for payment is not specified in this lease, an amount payable by the Tenant to the Landlord must be paid to the Landlord within 10 Business Days of the Landlord giving a notice to the Tenant requiring payment.
- (b) If the Tenant fails to pay an amount in accordance with clause 5.6(a), the Landlord may require the Tenant to pay interest under clause 5.5 on that amount from the date of the notice.
- (c) The Tenant must make payments under this lease to the Landlord (or to a person nominated by the Landlord in a notice to the Tenant) by electronic transfer or by any other method the Landlord reasonably requires.
- (d) The Tenant must make payments under this lease without any deduction, withholding, set-off or counterclaim.

5.7 Adjustment for mistake

If the Tenant pays an amount and it is found later that the amount was not correct, then even if the Landlord has given the Tenant a receipt, the Tenant must pay to the Landlord (or the Landlord must credit the Tenant with) the difference between what the Tenant has paid and what the Tenant should have paid on demand.

5.8 Landlord need not make demand

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

6. Rent Review

6.1 CPI

- (a) On and from each CPI Review Date the Rent is changed by the CPI Rate.
- (b) If the Rent to apply from any CPI Review Date is not determined before that date, then:
 - (i) until it is determined, the Tenant must continue paying instalments of Rent at the rate applicable before the relevant CPI Review Date; and
 - (ii) within 14 days after the reviewed Rent is determined, the Tenant must pay any shortfall for the period from the relevant CPI Review Date until the date on which the next instalment of Rent is due to be paid.

6.2 Rent minimum increase

Despite clause 6.1:

- (a) following the CPI Review Date on the first, second and third anniversary of the Commencement Date (or if this lease is series of leases, the original commencement date of the first lease), the Rent must not be less than 104% of the Rent payable immediately before the relevant CPI Review Date; and
- (b) following the CPI Review Date in any year of the Term (other than on the first, second and third anniversary of the Commencement Date (or if this lease is series of leases, the original commencement date of the first lease)), the Rent must not be less than 102.5% of the Rent payable immediately before the relevant CPI Review Date.

7. Market Rent Review

7.1 Market Rent Review

The Rent is to be reviewed on each Market Review Date in accordance with clauses 7.2 to 7.6.

7.2 Landlord may initiate Market Review

- (a) In this clause, Review Period means the period following each Market Review Date until the next Review Date or until the end of this lease.
- (b) The review procedure on each Market Review Date is as follows:
 - (i) the Landlord may initiate a review by giving the Tenant written notice stating the current market rent which it proposes as the rent for the Review Period. If the Tenant does not object in writing to the proposed rent within 28 days, it becomes the Rent for the Review Period;
 - (ii) if the Tenant serves on the Landlord an objection to the proposed rent within 28 days and the parties do not agree on the rent within 40 days after the objection is served, and then either party may request the President of the Australian Property

Institute – Victorian Division, to appoint a Valuer to determine the current market rent;

- (iii) in determining the current market rent for the Premises, the Valuer must:
 - (A) consider any written submission made by the parties which must be submitted to the Valuer within 28 days of the parties being informed of the Valuer's appointment;
 - (B) complete the determination within 60 days of receipt of submissions from the parties and provide a written report to the Tenant and the Landlord which clearly outlines the basis and reasoning of the determination;
 - (C) determine the current market rent as an expert;
 - (D) assume that the Premises is available to be leased on the same conditions as those contained in this lease, including any options for renewal and assuming a sitting tenant;
 - (E) take into account the conditions of this lease including the Permitted Use, assuming the Tenant has met all the obligations under this lease;
 - (F) ignore the Tenant's Fixtures and all improvements made by the Tenant to the Premises at the Tenant's Cost;
 - (G) ignore the goodwill of the Tenant's business;
 - (H) take into account current market rent for comparable premises;
 - (I) disregard any incentives in comparable rental evidence;
 - (J) where the Premises comprises more than one store within the Market Land, assess the rent on a store by store basis;
 - (K) have regard to any services made available to the Tenant by the Landlord in respect of the Trading Floor Complex or the Market Land (for example waste removal, security and other similar services); and
 - (L) have regard to the Tenant's rights to use the Licensed Area; and
- (iv) if no determination has been made within 60 days of the receipt of submissions as provided for in clause 7.2(b)(iii)(B), the parties may request the President of the Australian Property Institute – Victorian Division to appoint another Valuer in accordance with clause 7.2(b)(ii).

7.3 Determination binding

The Valuer's determination binds both parties.

7.4 Costs of determination

The Landlord and the Tenant must bear equally the Valuer's fee for making the determination. If either pays more than half the fee, the difference may be recovered from the other.

7.5 Payments until determination is made

Until the determination is made by the Valuer, the Tenant must continue to pay the same Rent as was payable immediately before the relevant Market Review Date. Within 7 days of being informed of the Valuer's determination, the parties must make any necessary adjustments.

7.6 Rent cannot decrease

Despite the other provisions of this clause 7, the Rent from the relevant Market Review Date must not be less than 102.5% of the Rent payable immediately before the relevant Market Review Date.

8. Use of Premises

8.1 Permitted use

- (a) The Tenant must use the Premises only for the Permitted Use, and in particular must only use the office component of the Premises for the purposes of an office.
- (b) If a consent, licence or approval is required from an Authority for the Premises to be used for the Permitted Use or for the Tenant to carry out any work in the Premises, the Tenant must, at the Tenant's own expense:
 - (i) obtain that consent, licence or approval; and
 - (ii) promptly make all applications and take all steps necessary to obtain that consent, licence or approval (but not so as to restrict or otherwise affect the use of any other part of the Trading Floor Complex).
- (c) The Tenant must:
 - (i) trade from the Premises during the Trading Hours; and
 - (ii) not trade from the Premises outside the Trading Hours, unless otherwise permitted by the Landlord.

8.2 No undesirable or illegal use

- (a) The Tenant must use the Premises and conduct the Tenant's business in accordance with all Laws.
- (b) The Tenant must not:
 - (i) use the Premises or any other part of the Market Land for residential accommodation or for any noxious, noisy, illegal or offensive act, business or use; or
 - (ii) do or omit to do any thing in the Premises or any other part of the Market Land which causes or may cause nuisance, damage or disturbance to any person who uses the Market Land or any occupier or owner of nearby property.

8.3 No signs

The Tenant must not without the Landlord's consent exhibit on the exterior of the Premises any sign, light, embellishment, advertisement, name, logo or notice.

8.4 Infectious disease in Premises

If an infectious disease occurs in the Premises, the Tenant must promptly give notice of that occurrence:

- (a) to every relevant Authority, and must comply with all Requirements of every relevant Authority to the satisfaction of the Authority; and
- (b) to the Landlord, and must permit the Landlord to enter the Premises to fumigate or disinfect them, and pay the Landlord all Costs the Landlord incurs in doing this.

8.5 Tenant to give notice of damage

The Tenant must:

- (a) promptly give written notice to the Landlord of:
 - (i) damage to the Premises or of any defect in the structure of, or any Services (including the Essential Safety Measures) to the Premises or the Market Land; and

- (ii) service by any Authority of a notice or order affecting the Premises; and
- (b) immediately give written notice to the Landlord of:
 - (i) any hazards threatening or affecting the Premises, the Trading Floor Complex or the Market Land; and
 - (ii) any hazards arising from the Premises; and
 - (iii) any emergency repairs and maintenance (such as power failures, burst water pipes and unsafe structures).

8.6 Use of facilities

The Tenant must not use the plumbing, electrical or other facilities in the Trading Floor Complex for any purpose except those for which they were constructed or provided.

8.7 No rodents or animals

The Tenant must keep the Premises free of rodents, vermin, insects, birds and animals and must, if the Landlord requires this, take part in and pay for the Cost of any pest control treatment the Landlord arranges for the Premises.

8.8 No storage of flammable substances

The Tenant must not (except as required for the conduct of the Tenant's business) store or use chemicals, inflammable liquids, acetylene, gas or volatile or explosive oils or substances in the Premises.

8.9 Compliance with fire regulations

The Tenant must comply with all insurance, sprinkler and security and fire alarm regulations concerning the Tenant's Fixtures.

8.10 Fire or emergency drills

- (a) The Tenant must comply with all fire and emergency training programmes and drills of which the Landlord gives at least 2 Business Days notice to the Tenant.
- (b) The Tenant must ensure that the Tenant's Agents are made fully aware of all safety and emergency procedures for the Market Land.

8.11 Environmental obligations

The Tenant must, and must ensure that the Tenant's Agents, take all reasonable steps in accordance with the Environmental Management Plan and in accordance with the Landlord's waste management policies (to the extent that the Tenant has been provided with the waste management policies).

8.12 Overloading Systems

- (a) The Tenant acknowledges and accepts that:
 - (i) the maximum capacity of tenancy sub-mains between the main switchboard / tenancy metering panel and the tenancy switchboard within the Premises is set out in Item 9(a);
 - (ii) the maximum capacity of the plate heat exchanger for the refrigeration system located within or connected to the Premises is set out in Item 9(b); and
 - (iii) the maximum capacity of the heating hot water take off points located in the mezzanine office component of the Premises is set out in Item 9(c).

- (b) The Tenant must not bring onto or allow to be installed in the Premises any machinery, plant or equipment which will result in the maximum capacity of the systems within the Premises as set out in Item 9 to be exceeded, without the Landlord's prior written consent.
- (c) The Tenant will be responsible for any damage caused to the Central Heating Plant, the Central Cooling Plant, the Landlord's Fixtures or the Trading Floor Complex arising from the Tenant exceeding the maximum capacity of the systems within the Premises.

8.13 Overloading Floors and Roofs

- (a) The Tenant must not bring onto or allow to be brought onto the Trading Floor Complex or the Premises any heavy machinery, plant or equipment or Tenant's Fixtures which exceed the load limits set out in Item 10, without the Landlord's prior written consent.
- (b) The Tenant will be responsible for any damage caused to the Trading Floor Complex or the Premises arising from the Tenant bringing any heavy machinery, plant or equipment or Tenant's Fixtures onto or removing them from the Trading Floor Complex or the Premises.

9. Repair and maintenance

9.1 Maintenance of Premises

- (a) The Tenant must:
 - (i) fully maintain, replace, repair and keep the Premises in good and substantial repair, working order and condition, to the same standard and condition it was in as at the earlier of:
 - (A) the Commencement Date; and
 - (B) the date that the Tenant first accessed the Premises; and
 - (ii) keep the Premises fitted out in accordance with and to the standard of plans, specifications and finishes approved by the Landlord.
- (b) The Tenant's obligations under clause 9.1(a) do not apply to reasonable wear and tear and damage by fire, flood, lightning, storm, tempest, earthquake, explosion, riot, civil commotion, act of God or war damage, except where any insurance money is not payable because of:
 - (i) an act or omission by the Tenant; or
 - (ii) a breach by the Tenant of any of the provisions of this lease.
- (c) Despite the provisions of this clause 9.1 and unless a provision in this lease expressly states otherwise, the Tenant is only obliged to do structural works or works of a capital nature including alterations, replacement, maintenance or repair to the Premises where those works are required because of:
 - (i) an act or omission by the Tenant;
 - (ii) a breach by the Tenant of a provision of this lease; or
 - (iii) the use or occupation of the Premises by the Tenant.

9.2 Maintenance of Tenant's Fixtures

The Tenant must fully maintain, repair and keep the Tenant's Fixtures in good and substantial repair, working order and condition.

9.3 Specific obligations

Without limiting clauses 9.1 and 9.2, the Tenant must, at the Tenant's expense and to the Landlord's satisfaction:

- (a) cleaning: keep the Premises and the Tenant's Fixtures clean and free from dirt and rubbish;
- (b) make good damage: promptly make good any damage to the Common Area caused or contributed to by the Tenant;
- (c) replacement of breakages: promptly repair and replace (irrespective of the cause) all:
 - (i) broken glass (including exterior display windows) with glass of at least the same quality; and
 - (ii) damaged lighting, electrical equipment (including light globes, starters for tubes and fluorescent tubes) and plumbing installed in the Premises; and
- (d) comply with Laws and Requirements: comply with all:
 - (i) Laws which relate to this lease or the Premises, the Permitted Use or the Tenant's business; and
 - (ii) Requirements, notices or orders of any relevant Authority.

9.4 Landlord's rights to inspect and carry out repairs

- (a) The Landlord may enter and inspect the Premises at all reasonable times on giving the Tenant reasonable notice (except in the case of emergency when no notice is necessary and the entry may be at any time).
- (b) The Landlord may give the Tenant notice of any defect in or work required to the Premises which is the Tenant's responsibility under this lease, requiring the Tenant to rectify the defect or to carry out the work within a reasonable time.
- (c) If the Tenant does not comply with a notice under clause 9.4(b) the Landlord may rectify the defect or carry out the work and the Tenant must pay the Landlord the Cost the Landlord incurs in rectifying the defect or carrying out the work.

9.5 Landlord may carry out works in the Premises

- (a) The Tenant must permit the Landlord at all reasonable times on reasonable notice (except in the case of emergency when no notice is necessary and the entry may be at any time) to enter and remain in the Premises to carry out work relating to the Premises or the Market Land.
- (b) The Landlord must, when carrying out work in the Premises under clause 9.5(a):
 - (i) attempt to minimise inconvenience to the Tenant as far as is practicable in the circumstances; and
 - (ii) remove from the Premises all rubbish resulting from the work and leave those parts of the Premises used as clean as they were prior to the Landlord carrying out the work.

9.6 Essential Safety Measures

- (a) The Landlord will regularly inspect and maintain the Essential Safety Measures, including fire sprinklers, emergency lighting, exit signs and fire fighting equipment on the Market Land.
- (b) The Landlord and Tenant confirm that:

- (i) the Law relating to Essential Safety Measures imposes certain obligations on the owner of a building to provide and maintain " Essential Safety Measures" as required for the particular building;
 - (ii) the Tenant occupies the Premises under this lease to the exclusion of the Landlord; and
 - (iii) strict compliance by the Landlord with the Law relating to Essential Safety Measures might be compromised by the tenancy.
- (c) Accordingly, the Tenant must:
- (i) refrain from conduct that alters or compromises the proper working condition of all emergency exit doors, paths of travel, smoke detectors, emergency lighting, exit signs and other Essential Safety Measures;
 - (ii) immediately advise the Landlord and confirm in writing any alteration, breakdown or theft of or damage to any Essential Safety Measures at the Premises;
 - (iii) allow the Landlord or its appointed agent to come into the Premises at any time on the provision of reasonable notice (except in the case of an emergency, when no notice is required) to inspect, maintain and/or repair any Essential Safety Measures;
 - (iv) maintain the display of any determination or annual essential safety measures report and report of maintenance checks, service and repair work kept on the Premises under the Law relating to the Essential Safety Measures and not make them available to any municipal building surveyor or building inspector except on receipt of prior approval from the Landlord;
 - (v) advise the Landlord verbally of any proposed inspection by a municipal building surveyor or building inspector and provide the Landlord with a copy of any notice received;
 - (vi) subject to clause 9.1(c), pay to the Landlord the Costs of maintaining the Essential Safety Measures in or servicing the Premises in good working order;
 - (vii) if a certificate or permit in relation to the fire safety of the Premises is required by any Authority whether on a periodic basis or otherwise, take all reasonable steps to assist the Landlord in providing or obtaining the certificate or permit and pay on demand any Costs associated with the provision of the certificate or permit; and
 - (viii) if the Tenant or the Tenant's Agents damage the Essential Safety Measures or trigger the fire sprinklers or other fire safety device, pay to the Landlord the Costs:
 - (A) of rectifying the damage; and
 - (B) associated with the triggering of the fire sprinklers or other fire safety device.
- (d) The Tenant acknowledges that any proposal by the Tenant for building works or renovations at the Premises has the potential to invoke the application of the Law relating to the Essential Safety Measures to the Premises. Accordingly, the Tenant must:
- (i) not apply to the local council or a private building surveyor for a planning permit or building permit for any building works or alterations at the Premises without first obtaining the Landlord's consent in writing, and then on the conditions that the Landlord specifies;

- (ii) before proceeding with the works, provide to the Landlord in writing:
 - (A) an explanation of the extent of regulatory compliance required and whether the works will result in a change to the building's classification under the Law relating to the Essential Safety Measures; and
 - (B) advice as to whether the nominated building surveyor proposes to use performance-based solutions under the Building Code of Australia and if so, their details and the estimated increase in building maintenance Costs this will create; and
 - (iii) on completion of the building works, provide a copy of any Essential Safety Measures determination or occupancy permit issued by the relevant building inspector so that it can be included in the essential safety measures logbook for the Premises.
- (e) The Tenant must pay for all essential safety measures inspections, reports and compliance arising as a result of the Tenant's works under clause 9.6(d) unless otherwise agreed by the Landlord in writing. If building works for the Premises instigated by the Tenant result in a requirement for the installation of Essential Safety Measures or an increase in maintenance, inspection or other Costs necessary to comply with any Law relating to Essential Safety Measures, the Tenant must on demand by the Landlord pay those additional Costs.
- (f) If the Tenant's proposed fitout and occupancy levels will exceed normal allowances for the mechanical services capacity for the Trading Floor Complex (for example, air conditioning) and require special treatment, the Tenant must at its Cost and using the Landlord's nominated contractors arrange for all necessary modifications or additions to the existing services to adequately meet the Tenant's present and future requirements for the Premises and to ensure compliance with all relevant Laws. The Tenant releases the Landlord from any Claim the Tenant may have as a result of the Tenant's modifications or additions to the services.
- (g) If the Landlord is prevented from or delayed in complying with any Law relating to Essential Safety Measures because of any act, neglect, default or use of the Premises by the Tenant, the Landlord may require the Tenant at the Tenant's Cost to do those things necessary to enable the Landlord to comply with those regulations.

9.7 Reporting damage or loss

If the Tenant suffers, or anticipates that it may suffer, any loss or damage as a result of an act or omission of the Landlord which may give rise to a Claim for compensation by the Tenant against the Landlord, the Tenant must immediately notify the Landlord giving details of the act or omission and of the alleged or anticipated loss or damage.

9.8 Tenant's works

- (a) The Tenant must not carry out any works to any of the Premises, the Market Land or the Services without the Landlord's approval (which must not be unreasonably withheld). If the Landlord approves any works, the Tenant must ensure that the works it does are done:
- (i) in a proper and workmanlike manner;
 - (ii) by contractors approved by the Landlord (who must act reasonably); and
 - (iii) in accordance with:
 - (A) any reasonable conditions imposed by the Landlord (including as to payment of its Costs);

- (B) any plans, specifications or schedule of finishes approved by the Landlord (who must act reasonably);
 - (C) all Laws (including Australian Standards) and Requirements of all Authorities;
 - (D) the Landlord's requirements and conditions relating to the employment of qualified contractors, occupational health and safety and electrical safety; and
 - (E) the Landlord's other reasonable requirements and directions.
- (b) If the Tenant undertakes the works referred to in this clause 9.8 with the Landlord's consent, the Landlord may impose conditions on the Tenant, which the Tenant must comply with when the Tenant vacates the Premises.
- (c) These conditions may include:
- (i) which parts of the Premises may not be reinstated and which parts must be; and
 - (ii) which items of the Tenant's Fixtures installed as part of the works must not be removed.

9.9 Tenant must not do certain works

- (a) Despite anything else in this lease, the Tenant must not carry out any repair, maintenance or other works to the Premises or the Market Land (even if the Tenant is liable to do those works under this lease) if the repair, maintenance or other works affects:
- (i) the structure of the Premises or the Market Land; or
 - (ii) any Service,
- (Specified Repair Work).**
- (b) For the avoidance of doubt, Specified Repair Work includes any work:
- (i) to any load bearing or structural walls of the Premises or the Trading Floor Complex;
 - (ii) to the floor of the Premises or the Trading Floor Complex except for any coating applied to the floor;
 - (iii) to the roof or ceiling (except for any false or suspended ceiling installed by or on behalf of the Tenant) of the Premises or the Trading Floor Complex;
 - (iv) affecting any of the Essential Safety Measures in the Premises, fire detection, prevention and protection equipment, emergency lighting or exit signs;
 - (v) to any emergency warning intercommunications system in or servicing the Premises or the Market Land; and/or
 - (vi) in relation to the installation and supply of electricity or the repair, maintenance or removal of equipment that supplies or conveys electricity.
- (c) All Specified Repair Work must be carried out by the Landlord and, to the extent that the Tenant is liable for any Specified Repair Work, at the Tenant's Cost.
- (d) The Landlord may appoint any contractor to carry out any Specified Repair Work (including any contractor appointed to provide long term facilities management services in respect of the Market Land) and the Costs of such Specified Repair Work will include all Costs properly charged by such contractor to the Landlord.

9.10 Obligations on termination of lease

- (a) The Tenant must on the earlier of the Termination Date or the date this lease otherwise ends, vacate the Premises and:
 - (i) reinstate the Premises (including Services) to the same standard and condition it was in as at the earlier of:
 - (A) the Commencement Date; and
 - (B) the date that the Tenant first accessed the Premises;
 - (ii) leave the Premises in a condition consistent with the Tenant having complied with the Tenant's obligations under this lease;
 - (iii) subject to clause 9.10(b), remove the Tenant's Fixtures, stock and Produce (which includes, but is not limited to, removing any racking in the Premises by grinding out the connecting pins in the concrete floor and refinishing the floor after its removal and leaving the Premises with all wiring and cabling secured and made safe); and
 - (iv) give the Landlord any access cards or identification cards or any other devices held by the Tenant or the Tenant's Agents.
- (b) Despite anything else in this lease and without limiting clause 9.10(a), the Tenant must remove from the Premises and the Trading Floor Complex (unless otherwise instructed by the Landlord):
 - (i) any inter-tenancy walls within the Premises in respect of which it receives written notice from the Landlord to remove; and
 - (ii) an item of the Tenant's Fixtures if:
 - (A) the Landlord has stated (as a condition of giving its approval to works) that the item of the Tenant's Fixtures must be removed; or
 - (B) the item of the Tenant's Fixtures is part of structural work done by the Tenant (or by the Landlord at the Tenant's request) in respect of which the Landlord gives the Tenant a notice requiring the Tenant to remove that item of Tenant's Fixtures.
- (c) When this lease ends, if any of the Tenant's Fixtures, stock and Produce or other property remain in the Premises (**Left Items**) then:
 - (i) unless the Landlord and the Tenant agree otherwise, the Left Items revert to, and become the absolute property of, the Landlord without any payment or compensation;
 - (ii) the Landlord may treat the Left Items as abandoned and remove any of them from the Premises and recover the Costs of the removal and making good as a liquidated debt payable on demand; and
 - (iii) to the extent possible at Law on the giving of notice by the Landlord, title to all or any Left Items is transferred to the Landlord (**Transferred Items**).
- (d) The Tenant:
 - (i) warrants to the Landlord that as at the date on which this lease ends, no third party will have any interest or Security in or Claim in respect of any Left Items;

- (ii) must do all things necessary (if any) to complete the transfer of ownership to the Landlord if the Landlord seeks by notice to effect a transfer of ownership in the Transferred Items to the Landlord; and
 - (iii) appoints the Landlord to be the attorney of the Tenant to act at any time after the end of this lease to execute any documentation the Landlord seeks to effect a transfer of ownership in the Transferred Items to the Landlord.
- (e) The Tenant must not cause any damage to the Premises when removing the Tenant's Fixtures, stock and Produce. If any damage is caused, subject to clause 9.10(f), the Tenant will make good the damage.
- (f) If the damage is to:
- (i) the structure of the Premises or the Trading Floor Complex; or
 - (ii) any Service,

the Landlord may elect to repair the damage at the Tenant's Cost. If the Landlord does so, the Tenant must pay the Landlord upon demand the Costs incurred by the Landlord in relation to repairing such damage.

10. Insurances and indemnities

10.1 Policies of insurance

During the Term and otherwise while in possession of the Premises, the Tenant must maintain insurance with a reputable insurer for:

- (a) public liability for at least \$20 million (or such other amount as the Landlord reasonably considers necessary from time to time) indemnifying the Landlord and the Landlord's Agents for their legal liability for personal injury and/or property damage arising from the acts and omissions of and the use and occupation of the Premises by the Tenant, which insurance policy must:
 - (i) waive all rights of subrogation against the Landlord;
 - (ii) include a cross liability clause under which the insurer agrees that:
 - (A) the term Insured applies to each person named on the policy as if a separate policy of insurance had issued to each of them; and
 - (B) any non-disclosure or breach of policy conditions by one insured does not prejudice the right of any other insured to claim under the insurance;
 - (iii) provide that it will not be brought into contribution with any other policy indemnifying the Landlord or the Landlord's Agents against the same risks; and
 - (iv) not exclude construction risk;
- (b) the Tenant's Fixtures and the Tenant's stock, Produce and any other items in the Premises for which the Tenant has responsibility under this lease against loss or damage from any cause whatsoever for the full replacement value (including extra Costs to comply with Australian Standards or any other standard or requirements that may apply at the time of the loss or damage);
- (c) the financial consequences of interruption caused to the Tenant's business as a result of the Tenant not being able to carry on business from the Premises (arising from any cause whatsoever and providing cover for a period of at least 12 months);

- (d) any person employed by the Tenant as required by any Law relating to workers' compensation; and
- (e) any other insurance required by Law or reasonably required by the Landlord.

10.2 Production of policies of insurance

In relation to the insurance policies effected under clause 10.1 the Tenant must:

- (a) provide evidence of each policy immediately after it is taken out and a certificate or other evidence satisfactory to the Landlord of the currency of the policy within 20 Business Days of each anniversary of the Commencement Date and at any other time the Landlord reasonably requires;
- (b) ensure that each policy is taken out with an insurance company of good repute and sound financial backing;
- (c) pay all premiums punctually;
- (d) ensure that the State's and the Landlord's interests (and those of any mortgagee of the Landlord and any other person the Landlord nominates) are noted on each policy; and
- (e) ensure that each policy provides that:
 - (i) the policy cannot lapse or be terminated or varied within 30 days prior notice to the Landlord;
 - (ii) the insurer will treat notice of any occurrence given by any insured party as notice given by all insured parties; and
 - (iii) failure by one insured party to disclose any material information or to comply with the conditions of the policy will not prejudice the rights of any other insured party.

10.3 Tenant not to void insurance

The Tenant must not do any thing in the Premises or in the Trading Floor Complex which may:

- (a) vitiate or render void or voidable any insurance; or
- (b) increase the rate of premium on any insurance.

10.4 Payment of additional premiums

The Tenant must reimburse the Landlord for all extra premiums for insurance taken out by the Landlord, if those extra premiums are payable because of any extra risk caused by the Tenant's use of the Premises, whether or not the Landlord has approved that extra risk.

10.5 Tenant's risk

The Tenant occupies the Premises and enters and uses the Market Land, the Trading Floor Complex and the Premises at its risk.

10.6 Indemnity

The Tenant is liable for and indemnifies the Landlord and each of the Landlord's Agents against all Claims directly or indirectly arising from or incurred in connection with damage to, or the loss or the Cost of, any property or injury to or the death of any person occurring on:

- (a) the Market Land to the extent caused or contributed to by the act, omission or negligence of the Tenant or the Tenant's Agents; or
- (b) the Premises except to the extent the damage, loss, injury or death is caused or contributed to by:
 - (i) the negligent act or omission of the Landlord or the Landlord's Agents; or

- (ii) the default of the Landlord under this lease caused by the Landlord or the Landlord's Agents.

10.7 Release

The Tenant releases the Landlord and each of the Landlord's Agents from any liability for Claims directly or indirectly arising from or incurred in connection with:

- (a) any damage to, or the loss or the Cost of, any property or injury to or the death of any person except to the extent it is caused or contributed to by:
 - (i) the negligent act or omission of the Landlord or the Landlord's Agents; or
 - (ii) the default of the Landlord under this lease caused by the Landlord or the Landlord's Agents,

other than in the performance of anything the Landlord is permitted or required to do under this lease; or
- (b) if the Landlord has complied with its obligations under clause 11.2:
 - (i) a Service not being available, being interrupted or not working properly; or
 - (ii) the Landlord's plant and equipment not working properly; or
 - (iii) the Common Areas not being clean and in good order; or
 - (iv) the Premises not being watertight.

10.8 Compliance with lease

The Tenant is liable for and indemnifies the Landlord and each of the Landlord's Agents for any loss or damage suffered by the Landlord or the Landlord's Agents if the Tenant or the Tenant's Agents fail to comply with any obligation as to conduct imposed on the Tenant or the Tenant's Agents by this lease or by any Law.

10.9 No merger

The indemnities in this clause 10 are independent from the Tenant's other obligations under this lease and do not come to an end when this lease expires or is terminated. It is not necessary for the Landlord to incur expense or make a payment before enforcing these indemnities.

10.10 Occupational Health and Safety

- (a) The Tenant must comply with the Landlord's OH&S Plan.
- (b) The Tenant must indemnify and keep indemnified the Landlord from and against any liability under the *Occupational Health and Safety Act 2004* (Vic), any regulations made under that Act and the *Occupational Health and Safety Act 1985* (Vic) (**OH&S Legislation**).
- (c) The Tenant must act, keep, maintain and at the expiration or sooner determination of the Term return to the Landlord the Premises in a manner which complies with the OH&S Legislation.
- (d) For the purposes of the OH&S Legislation, the Tenant acknowledges that it is the occupier of the Premises and it has responsibility for the management and control of the Premises.

11. Landlord's obligations

11.1 Quiet enjoyment

The Tenant may peaceably possess and enjoy the Premises for the Term without any interruption or disturbance from the Landlord, except to the extent interruption or disturbance is permitted by a provision of this lease.

11.2 Landlord's additional obligations

The Landlord must use all reasonable endeavours to:

- (a) subject to the Tenant's obligations in this lease:
 - (i) maintain the building within which the Premises are contained in a structurally sound condition;
 - (ii) maintain all Services and the Landlord's plant and equipment (including the Central Heating Plant and the Central Cooling Plant) in working order; and
 - (iii) comply with all Laws and Requirements in respect of the Market Land and the Premises (except to the extent that the Tenant or other lessees, licensees or occupiers of the Market Land are required to comply with the Laws and Requirements); and
- (b) pay (subject to any right of reimbursement or recovery from the Tenant under this lease) all rates, taxes and other outgoings assessed, metered or levied against the Landlord or the Market Land.

12. Management and operation of the Trading Floor Complex and Market Land

12.1 Common Area

- (a) The Landlord may make available within the Trading Floor Complex or on the Market Land any part of the Trading Floor Complex and Market Land that the Landlord determines for use as Common Area.
- (b) The Tenant may use the Common Area together with other people who use the Market Land.
- (c) The Common Area is at all times under the control of the Landlord.
- (d) The Landlord may operate, manage, decorate, refurbish, equip, police, light, repair and maintain the Common Area as the Landlord sees fit.
- (e) The Landlord may increase, decrease or otherwise vary the size, location or nature of the Common Area.

12.2 Use of the Common Area

The Tenant must not:

- (a) cause an obstruction in any part of the Common Area;
- (b) use any part of the Common Area for purposes other than access to or egress from the Premises; or
- (c) leave any goods or articles in any part of the Common Area.

12.3 Operating Rules

- (a) The Operating Rules form part of this lease and the Tenant must, and must ensure that the Tenant's Agents, comply with the Operating Rules.
- (b) The Landlord may vary, suspend, revoke or make new Operating Rules when the Landlord reasonably considers necessary or desirable for:
 - (i) regulating the use of the Premises, the Common Area or the Market Land generally;
 - (ii) the management, security, safety, health, care or cleanliness of the Market Land; or
 - (iii) compliance with directions of any Authority.
- (c) If the terms of this lease are inconsistent with the Operating Rules:
 - (i) the Operating Rules must be read down to the extent necessary to remove the inconsistency; and
 - (ii) the terms of this lease prevail.
- (d) A failure by the Tenant to comply, or procure that the Tenant's Agents comply, with the Operating Rules constitutes a breach of this lease.

13. Default and termination

13.1 Tenant's default

The Tenant is in default and the Landlord may terminate this lease if:

- (a) the Tenant has failed to pay Rent or any other payments under the Lease to the Landlord on time, and the Landlord has given the Tenant a notice specifying the amount owing and requiring the Tenant to pay it within 14 days after the notice is given; or
- (b) an Insolvency Event occurs in respect of the Tenant, and the Landlord has given the Tenant a notice requiring the Tenant to prove to the Landlord's satisfaction within seven days after the notice is given that it is no longer subject to the Insolvency Event; or
- (c) the Tenant has not complied with any other obligation under this lease, and in the Landlord's reasonable opinion the non-compliance can be remedied, and the Landlord has given the Tenant a notice specifying the non-compliance and requiring the Tenant to remedy it within a reasonable time after the date the notice is given,

and the Tenant does not comply with a notice given by the Landlord under this clause 13.1.

13.2 Statutory notice

If any Law requires the Landlord to give a notice in a particular form before terminating this lease then the notice required by that Law will be sufficient to satisfy the Landlord's obligations under clause 13.1.

13.3 Loss of bargain

If the Landlord terminates this lease under clause 13.1 because the Tenant has not complied with an essential term under this lease and the Landlord re-enters and takes possession of the Premises, the Tenant indemnifies the Landlord against any Claims arising because the Landlord will not receive the benefit of the Tenant performing its obligations under this lease from the date of the termination until the Terminating Date.

13.4 Essential terms

The essential terms of this lease include the Tenant's obligations under clauses 5 (Tenant's financial obligations), 8 (Use of Premises), 9 (Repair and maintenance), 10 (Insurances and indemnities), 12 (Management and operation of the Trading Floor Complex and Market Land), 16 (Assignment and subletting), 17 (Security Amount), 18 (Goods and Services Tax (GST)), 21 (Licensed Area), 22 (Retail Act), 23.3 (PPSA) [and] 23.17 (Caveats) and 25 (Increased Space Contribution [*Optional Clause*]) and each of the Tenant's obligations to pay money.

13.5 Liabilities on termination

No liability will attach to the Landlord as a result of termination of this lease under this clause 13 but that termination will not affect the rights of either party in respect of any preceding breach of this lease.

13.6 Indemnity for default

The Tenant indemnifies the Landlord against Claims arising from the Tenant's default or the Landlord's exercise of its rights under this lease.

14. Damage or destruction

14.1 Suspension of Rent

If the Premises or any part of the Market Land are damaged so that the Premises cannot be used or accessed for the Permitted Use:

- (a) a fair proportion of the Rent is to be suspended until the Premises are again wholly fit and accessible for the Permitted Use; and
- (b) the suspended proportion of the Rent must be proportioned to the nature and extent of the damage or inaccessibility.

14.2 Reinstatement of Premises

If the Premises are wholly or substantially destroyed or damaged:

- (a) the Landlord is not obliged to reinstate the Premises; and
- (b) if the reinstatement does not start within a reasonable time or is not likely to be completed within nine (9) months, the Landlord or the Tenant may end this lease by giving the other written notice.

14.3 No Suspension of Rent

The Tenant will not be entitled to suspension of Rent under clause 14.1(a) nor to end this lease under sub-clause 14.2(b) 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.

14.4 Previous Breach

The rights of either party will not be prejudiced in respect of any previous breach of the provisions of this lease.

14.5 No Obligation to Reinststate

Despite any provision in this clause 14, the Landlord will not be obliged to reinstate the Premises or the Market Land.

14.6 Liabilities on termination

No liability will attach to the Landlord or to the Tenant as a result of termination of this lease under this clause 14 but that termination will not affect the rights of either party in respect of any preceding breach of this lease.

14.7 Dispute

If there is any dispute under this clause 14, either party may request the President of the Australian Property Institute, Victorian Division, to nominate a practising valuer member of that Institute to determine the dispute. The valuer acts as an expert and not as an arbitrator and the determination is binding.

15. Notices

15.1 Method of service

Any notice to be given under this lease by one of the parties to the other must be in writing and is given for all purposes by delivery in person, by pre-paid post or by facsimile addressed to the receiving party at the address specified in the notice details in the Information table or in the case of the Tenant, by sending the notice by pre-paid post to the Tenant's last known address or leaving it at the Premises or at the Tenant's Post Box.

15.2 Time of service

Any notice given in accordance with this lease will be deemed to have been duly served:

- (a) in the case of posting at the expiration of 2 Business Days after the date of posting;
- (b) in the case of facsimile, on the first Business Day after the date of transmission (providing the sending party receives a facsimile machine verification report indicating that the notice has been transmitted);
- (c) in the case of leaving it at the Premises, that day; and
- (d) in the case of leaving at the Tenant's Post Box, on the first Business Day after the notice has been left at the Tenant's Post Box.

15.3 Change of address

A party may at any time change its address, postal address or facsimile number by giving notice to the other party.

16. Assignment and subletting

16.1 Transfers and Dealings

The Tenant must not assign, sublet, licence, part with, share the possession of, grant any mortgage, charge or otherwise deal with the Premises or this lease without the prior written consent of the Landlord (which the Landlord must not unreasonably withhold in the case of assignment to a related body corporate (as that term is defined in the *Corporations Act 2001* (Cth)) of the Tenant).

16.2 Assignment

- (a) The Landlord will not unreasonably withhold its consent to the Tenant assigning this lease if the following conditions are satisfied:
 - (i) at the time the Tenant notifies the Landlord in writing of its wish to assign this lease, the Tenant has remedied any breach of this lease, notice of which has been given to the Tenant;
 - (ii) the Tenant provides the Landlord with a copy of the fully executed business sale contract relating to the transfer of the business conducted by the Tenant at the Premises or, if acceptable to the Landlord, details of those items of the Tenant's business which are being transferred to the new tenant;

- (iii) the Tenant pays the Costs and disbursements incurred by the Landlord of and incidental to its consent including any reasonable legal costs associated with giving its consent or giving effect to its consent;
 - (iv) the Tenant satisfies the Landlord that the proposed new tenant is respectable, financially sound and capable of fulfilling the Tenant's obligations under this lease;
 - (v) the proposed new tenant:
 - (A) enters into an agreement with the Landlord and the Tenant in the form required by the Landlord that he or she will comply with the provisions of this lease; and
 - (B) provides any bank guarantee and/or guarantee and indemnity required by the Landlord; and
 - (vi) the Tenant has obtained any consent which the Tenant is obliged to obtain.
- (b) If the Tenant assigns or otherwise deals with the Premises or this lease under this clause 16, the Tenant will remain liable under this lease and will not be released from its obligations whether in respect of past, present or future breaches of the Tenant's obligations under this lease.

16.3 Change in control of the Tenant

If:

- (a) the Tenant is a company which is neither listed nor wholly owned by a company which is listed on the Australian Securities Exchange; and
- (b) there is a proposed change in:
 - (i) the membership of the Tenant or its holding company;
 - (ii) the beneficial ownership of the shares in the Tenant or its holding company; or
 - (iii) the beneficial ownership of the business or assets of the Tenant,
 so that a different person or group of persons will control the composition of the board of directors or more than 50% of the shares giving a right to vote at general meetings,

then:

- (c) that proposed change in control is treated as a proposed assignment of this lease which requires the Landlord's prior written consent in accordance with clauses 16.1 and 16.2; and
- (d) the person or group of persons acquiring control is treated as the proposed new tenant.

16.4 Landlord's Rights on Deemed Assignments

- (a) The Landlord may, within 30 days of becoming aware of any of the events listed in clause 16.3 occurring (**Deemed Assignment**) to which the Landlord has not consented, either:
 - (i) consent to the Deemed Assignment in accordance with the provisions of clauses 16.1 and 16.2; or
 - (ii) terminate this lease by giving written notice to the Tenant.
- (b) Termination under this clause does not affect the rights of the Landlord against the Tenant for any antecedent breach by the Tenant of its obligations under this lease.

16.5 Increase of Rent on subletting

Despite anything else in this lease, if the Tenant sublets any part of the Premises to a third party, the Landlord may, by prior written notice to the Tenant and as a condition of giving its consent to the sublease under clause 16.1, increase the then current Rent by an amount not exceeding 15% for the period of the subletting.

16.6 Using this lease etc as security

- (a) The Tenant must get the Landlord's consent before the Tenant creates or allows to come into existence a Security which is not a Permitted Security affecting the Tenant's Fixtures. The Landlord may impose conditions if the Landlord gives consent.
- (b) The Tenant must not grant Security over the Landlord's Fixtures or this lease, but it may in the ordinary course of business grant a general security agreement over all of its other assets and undertaking.
- (c) In this clause 16.6, **Permitted Security** means:
 - (i) the interest of a supplier who delivers stock or other goods to the Tenant, in that stock or other goods;
 - (ii) a Security taken in property to the extent that it secures all or part of its purchase price;
 - (iii) the interest of a lessor or bailor under a PPS Lease;
 - (iv) any Security advised to the Landlord by notice from the Tenant before entering into this lease and agreed to by the Landlord in writing; or
 - (v) any Security created subsequently with the prior written consent of the Landlord and in respect of which the Tenant's financier enters into an agreement with the Landlord prepared by the Landlord at the Tenant's Cost and otherwise on terms and conditions satisfactory to the Landlord.

17. Security Amount

17.1 Security Amount

The Tenant must give the Landlord the Security Amount by way of a Bank Guarantee or Insurance Bond before the Commencement Date.

17.2 Use of Security Amount

If the Tenant does not comply with any of the Tenant's obligations under this lease (including any extension or holding over), the Landlord may draw on the Bank Guarantee or Insurance Bond, and apply the proceeds as its own property, without notice to the Tenant.

17.3 Reinstatement of Security Amount

If the Landlord draws on the Bank Guarantee or Insurance Bond, the Tenant must immediately give to the Landlord a replacement Bank Guarantee or Insurance Bond for the Security Amount.

17.4 Replacement Insurance Bond and Bank Guarantee

If, at any time the Landlord reasonably considers that the Bank Guarantee or Insurance Bond may be unenforceable or the entity providing the Bank Guarantee or the Insurance Bond will be unable to pay to the Landlord one hundred per cent (100%) of the amount secured by the Bank Guarantee or the Insurance Bond if called upon, and the Landlord gives notice to this effect to the Tenant, then the Tenant must provide the Landlord with a replacement Bank Guarantee or Insurance Bond within seven days of receipt of the Landlord's notice. Such replacement Bank Guarantee or

Insurance Bond must be from an entity which is acceptable to the Landlord. The Landlord must act reasonably in its requirements pursuant to this clause.

17.5 Return of Security Amount

As soon as practicable after this lease ends and the Tenant has vacated the Premises and performed all of its obligations under this lease, the Landlord must return any unused part of the Security Amount to the Tenant.

17.6 Change in ownership

If the Landlord assigns or disposes of its interest in this lease, the Head-Lease or the Premises, the Tenant must do whatever is necessary on the Tenant's part to give the benefit of the Bank Guarantee or Insurance Bond to a new party, including, if the Landlord requires, giving the new party a new Bank Guarantee or Insurance Bond for the Security Amount. The Landlord must reimburse the Tenant the reasonable cost incurred by the Tenant in procuring a new Bank Guarantee or Insurance Bond.

18. Goods and Services Tax (GST)

18.1 Interpretation

Words or expressions used in this clause 18 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause.

18.2 Consideration is GST exclusive

Any consideration to be paid or provided for a supply made under or in connection with this lease, unless specifically described in this lease as 'GST inclusive', does not include an amount on account of GST.

18.3 Gross up of consideration

Despite any other provision in this lease, if a party (**Supplier**) makes a supply under or in connection with this lease on which GST is payable (not being a supply the consideration for which is specifically described in this lease as 'GST inclusive'):

- (a) the consideration payable or to be provided for that supply under this lease but for the application of this clause (GST exclusive consideration) is increased by, and the recipient of the supply (**Recipient**) must also pay to the Supplier, an amount equal to the GST exclusive consideration multiplied by the prevailing rate of GST (**GST Amount**); and
- (b) subject to clause 18.5, the GST Amount must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.

18.4 Reimbursements (net down)

If a payment to a party under this lease is a reimbursement or indemnification or otherwise calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party, or the representative member of the GST group that the party is a member of (as the case may be), is entitled in respect of that loss, cost or expense.

18.5 Tax invoices

The Recipient need not pay the GST Amount in respect of a taxable supply made under or in connection with this lease until the Supplier has given the Recipient a tax invoice in respect of that taxable supply.

19. Not Used

20. Option for a new lease

20.1 Grant of new lease

If Item 8 provides for an option, the Landlord must grant a new lease under this clause 20 on the Termination Date to commence on the next day only if:

- (a) the Tenant gives the Landlord a notice stating that the Tenant wants a new lease of the Premises for the term first specified in Item 8;
- (b) the Landlord receives that notice not more than nine months nor less than six months before the Termination Date;
- (c) when the Tenant gives that notice, and on the Termination Date, the Tenant is not in breach of this lease about which the Landlord has given the Tenant a notice and has not persistently breached this lease throughout the Term; and
- (d) the Tenant delivers to the Landlord before the Termination Date a guarantee and indemnity in connection with the Tenant's obligations under the new lease by the same person, or another person acceptable to the Landlord, on the same terms as any given in connection with the Tenant's obligations under this lease.

20.2 Provisions of new lease

The new lease is to be identical with this lease except that:

- (a) if the particulars of the new lease are the only particulars specified in Item 8:
 - (i) the commencement date, the term and the termination date are to be those first specified in Item 8; and
 - (ii) this clause 20 is deleted and Item 8 is noted as 'Not applicable';
- (b) if particulars of more than one new lease are specified in Item 8:
 - (i) the commencement date, the term and the termination date are to be those first specified in Item 8; and
 - (ii) the particulars of the new lease first specified are deleted from Item 8;
- (c) any incentive or delayed rent commencement date, as well as any clauses granting an incentive, are to be deleted;
- (d) the rent from the commencement date of the new lease is to be the current annual market rent decided under clause 7 on the basis that the commencement date of the new lease is the relevant review date for the purpose of clause 7 except that the new rent must not be less than the Rent on the Termination Date; **[and]**
- (e) **[clause 25 of the lease will be deleted if:**
 - (i) **a 'Specified Dealing' (as defined in clause 25) has occurred; and**
 - (ii) **the Tenant has paid the 'Increased Space Contribution' (as defined in clause 25) in full and the subsequent assignee or transferee of the Tenant is not required to pay the Increased Space Contribution]; [and]**
- (f) **clause 26 of the lease will be deleted; [and]**
- (g) the new lease must reflect any variations:

- (i) in the ownership of the Market Land; and
- (ii) to this lease,

which become effective during the Term and any changes required to reflect changes in the Landlord's then current precedent lease for the Trading Floor Complex.

20.3 Security Amount

On or before the commencement date of any new lease granted under clause 20, the Tenant must give to the Landlord a replacement Bank Guarantee or Insurance Bond for the Security Amount, so that the amount of the Bank Guarantee or Insurance Bond is increased to the Security Amount.

21. Licensed Area

21.1 Definition

In this lease, Licensed Area means the part of the Trading Floor Complex shown on the plan in Annexure A and marked 'Display Area' and 'Sorting Area' as varied from time to time under clause 21.6, including all Landlord's Fixtures in on or around these areas.

21.2 Tenant's rights

- (a) The Tenant may, throughout the Term, use the Licensed Area for purposes in connection with the business conducted from the Premises, subject to any reasonable conditions the Landlord may impose from time to time.
- (b) The Tenant may use the Licensed Area as licensee and does not have the right to exclusive possession of the Licensed Area.

21.3 Tenant's obligations

- (a) The provisions of this lease apply to the Licensed Area as if the Licensed Area was part of the Premises.
- (b) The Tenant's use of the Licensed Area is at the Tenant's risk.
- (c) Without limiting clause 21.3(a) and 21.3(b), the Tenant must:
 - (i) keep and maintain the Licensed Area in good condition;
 - (ii) keep the Licensed Area clean and tidy;
 - (iii) maintain the insurance for the Licensed Area; and
 - (iv) indemnify the Landlord,in the same manner and to the same extent as provided in this lease as if the Licensed Area was part of the Premises.
- (d) If the Tenant does not comply with the Operating Rules to the extent that they apply to the Licensed Area, the Landlord may, by giving written notice to the Tenant, suspend the Tenant's right to use the whole or any part of the Licensed Area.
- (e) Despite clause 21.3(a), the Tenant is not required to pay a separate fee for the Licensed Area. However, the use by the Tenant of the Licensed Area may be taken into account in any market rent review under clause 7.

21.4 Breach

If the Tenant breaches this clause 21, clause 13 applies.

21.5 Assignment

- (a) If the Tenant assigns this lease with the Landlord's consent:

- (i) the Tenant must also transfer (and will be taken to have transferred) the Tenant's rights under this clause 21; and
 - (ii) the Landlord must consent (and will be taken to have consented) to the transfer of the Tenant's rights under this clause 21.
- (b) If the Landlord assigns or disposes of its interest in this lease, the Head-Lease or the Premises:
 - (i) the Landlord must transfer (and will be taken to have transferred) the Landlord's rights under this clause 21 to the new party;
 - (ii) the Tenant must comply with its obligations under this clause 21 in favour of the new party; and
 - (iii) the Tenant releases the Landlord from complying with the Landlord's obligations under this clause 21 on and from the date the Landlord's rights are transferred to the new party.

21.6 Reduced area

The Landlord may, by not less than 14 days' notice to the Tenant, reduce the Licensed Area to an area specified in the Landlord's notice (**Reduced Licensed Area**) and specify the date from which the Tenant must start using the Reduced Licensed Area and cease using the Licensed Area. The Landlord may exercise the Landlord's rights under this clause 21.6 as often as the Landlord requires.

22. Retail Act

22.1 No application

The parties agree that the Retail Act does not apply to this lease.

22.2 Tenant not to cause Retail Act to apply

The Tenant must not do anything or allow anything to be done on the Premises that will cause the Retail Act to apply and the Tenant indemnifies the Landlord and the Head-Landlord against any loss it may suffer as a result of the breach of this clause by the Tenant.

23. General

23.1 Duty

The Tenant must if this lease is required by Law to be stamped, pay all duty on this lease.

23.2 Costs

Each party must pay its own Costs of and incidental to the negotiation, preparation, settling, completion, execution and stamping of this lease.

23.3 PPSA

- (a) The Tenant waives its right to receive any verification statement (or notice of any verification statement) in respect of any financing statement or financing change statement relating to any Security in favour of the Landlord created under this lease.
- (b) Neither party is permitted to disclose any information under section 275(1) of the PPSA, unless section 275(7) of the PPSA applies.
- (c) The Landlord and the Tenant contract out of the Landlord's obligation to dispose of or retain collateral under section 125 of the PPSA, and the Tenant's right to receive any

notice under section 130 and section 135 of the PPSA and to receive any statement and account under section 132 of the PPSA.

23.4 Further assurances

The Tenant must do everything the Landlord reasonably requires to:

- (a) bind the Tenant under this lease;
- (b) allow the Landlord to exercise a right under this lease; and
- (c) to give full effect to this lease,

including, in relation to any Security in favour of the Landlord, anything necessary for the purposes of:

- (d) ensuring that the Security is enforceable, perfected and otherwise effective;
- (e) enabling registration, or giving notification, in connection with that Security so that the Security has priority; or
- (f) exercising rights in connection with that Security.

23.5 Severability

If an Authority holds that:

- (a) part of this lease is void, voidable, illegal or otherwise unenforceable; or
- (b) this lease would be void, voidable, illegal or otherwise unenforceable unless a provision of this lease is severed from this lease,

then that part will be severed from this lease and will not affect the continued operation of the rest of this lease.

23.6 Whole agreement

This lease comprises the whole of the agreement between the parties concerning its subject matter.

23.7 Effect of execution

This lease binds each person who executes it as a Tenant, even if any other person named as Tenant has not executed or never executes this lease, or the execution of this lease by any of those persons (except the person sought to be made liable) is or becomes void or voidable.

23.8 Governing law

This lease is governed by the Laws of the State and the Commonwealth of Australia and the Landlord and the Tenant submit to the non-exclusive jurisdiction of the Courts of the State.

23.9 Compliance by others

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

23.10 Alterations

This lease may be altered only in writing signed by each party.

23.11 Approvals and consents

Except where this lease expressly states otherwise, a party may withhold or give conditionally any approval or consent under this lease.

23.12 Counterparts

This lease may be entered into by the exchange of executed counterparts.

23.13 Waiver

A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

23.14 Relationship

Except where this deed expressly states otherwise, it does not create a relationship of employment, trust, agency or partnership between the parties.

23.15 Exclusion of statutory provisions

- (a) Section 144 of the *Property Law Act 1958* (Vic) does not apply to this lease.
- (b) The covenants and powers implied by the *Property Law Act 1958* (Vic) do not apply to this lease unless a particular provision of this lease specifies otherwise.
- (c) The covenants, powers and provisions implied in leases by section 67 of the *Transfer of Land Act 1958* (Vic) do not apply to this lease.

23.16 Continuing obligations

An obligation imposed on a party by this lease continues throughout the Term and after the end of this lease if the obligation has not already been performed.

23.17 Caveats

The Tenant must not:

- (a) lodge a caveat on the title to the Market Land; or
- (b) allow a caveat lodged by a person claiming through the Tenant to remain on the title to the Market Land.

24. If the Head-Lease ends

- (a) This lease will end automatically if the Head-Lease ends for any reason. It will end at the same time as the Head-Lease ends.
- (b) The ending of this lease under clause 24(a) does not affect the Landlord's or the Tenant's rights relating to any breach of this lease that happens before this lease ends.
- (c) Despite anything else in this lease, if the Head-Lease ends for any reason, the Tenant must, if requested by the Landlord or the Head-Landlord, enter into a direct lease with the Head-Landlord for the Premises for the remainder of the then remaining term of this lease on the same terms of this lease.
- (d) If there is inconsistency between this clause 24 and any other provision in this lease, this clause 24 prevails.

25. Increased Space Contribution [**Optional Clause**]

25.1 Definitions

In this clause 25:

- (a) **Footscray Market** means the Melbourne Wholesale Fruit, Vegetable and Flower Market located at 542 Footscray Road, West Melbourne, Melbourne, Victoria;
- (b) **Increased Space** means [**Insert**] square metres;

- (c) **Increased Space Contribution** means the amount calculated in accordance with clause 25.4;
- (d) **Increased Space Value** means [*Insert*], calculated as \$3,000 per square metre of the Increased Space; and
- (e) **Proportionate Contribution** means an amount equal to:

$$\text{ISV} \times (\text{SDA} \div \text{NAP}),$$
 where:
 - ISV = Increased Space Value;
 - SDA = the area of the Premises, in square metres, which is the subject of the Specified Dealing; and
 - NAP = total notional area of the Premises in square metres (calculated in accordance with the areas set out in Item 1).
- (f) **Specified Dealing** means any assignment, subletting, transfer, surrender or parting with possession, of the whole or any part of the Premises, or any change in control of the Tenant or its holding company of the type referred to in clause 16.3, which occurs before or within the first 9 years from the Commencement Date.

25.2 Acknowledgement

The Tenant acknowledges that:

- (a) the total average internal floor area of the store(s) comprising the Premises exceeds the total internal store area provided by the Landlord to the Tenant at the Footscray Market as at 15 November 2010 by the amount of the Increased Space; and
- (b) in consideration for this Increased Space, the Tenant may be required to pay the Increased Space Contribution to the Landlord in accordance with this clause 25.

25.3 Payment of Increased Space Value

- (a) The Tenant will be required to pay the Increased Space Contribution to the Landlord if, and when, it seeks to make a Specified Dealing.
- (b) The Increased Space Contribution must be paid to the Landlord, in the manner it directs, at the same time that the Tenant seeks the Landlord's written consent to the Specified Dealing under clause 16.1.
- (c) Despite anything else in this lease, any Specified Dealing is subject to and conditional upon the Tenant paying the full amount of the Increased Space Contribution.

25.4 Amount of Increased Space Contribution

The amount of the Increased Space Contribution which is payable by the Tenant under this clause 25 will be:

- (a) equal to 100% of the Proportionate Contribution if the Specified Dealing occurs before or within the first 5 years from the Commencement Date;
- (b) equal to 80% of the Proportionate Contribution if the Specified Dealing occurs during the 6th year from the Commencement Date;
- (c) equal to 60% of the Proportionate Contribution if the Specified Dealing occurs during the 7th year from the Commencement Date;

- (d) equal to 40% of the Proportionate Contribution if the Specified Dealing occurs during the 8th year from the Commencement Date;
- (e) equal to 20% of the Proportionate Contribution if the Specified Dealing occurs during the 9th year from the Commencement Date; and
- (f) nil if the Specified Dealing occurs during the 10th or any subsequent year from the Commencement Date.

25.5 Obligation not passed onto incoming party

For the avoidance of doubt, the obligation to pay the Increased Space Contribution must be complied with by the Tenant as named in this lease and is not an obligation of any subsequent assignee or transferee of the Tenant.

26. Rent Abatement Period [*Optional Clause*]

- (a) Despite any other clause of this lease but subject to clause 26(c), the Landlord waives the requirement for the Tenant to pay Rent for the first [*insert*] months of the Term (**Rent Abatement Period**) on the basis that:
 - (i) despite the provisions of this clause 26:
 - (A) the parties agree that the provisions of this clause 26 will be ignored when the Rent is being reviewed or varied under this lease; and
 - (B) all payments other than the Rent must be paid as required under this lease during the Rent Abatement Period; and
 - (ii) this clause 26 will only apply for the Term set out in the information table and not apply to any renewal or extension of the Term.
- (b) The Tenant acknowledges that:
 - (i) the provision of the Rent Abatement Period to the Tenant under this clause 26 is personal to the Tenant; and
 - (ii) the Tenant obtained the benefit of the Rent Abatement Period in consideration for the Tenant complying with the provisions of this lease for the whole of the Term.
- (c) The Rent Abatement Period granted pursuant to this clause 26 is subject to and conditional upon the Tenant having signed:
 - (i) the agreement for lease pursuant to which this lease was granted; and
 - (ii) this lease,on or before 31 May 2013.
- (d) Despite anything else in this lease, this clause 26 will be deleted from any new lease granted pursuant to clause 20.

Schedule 1 – Landlord's Fixtures

Landlords Fixtures

Office door, windows and furniture

External roller door, motor and controls

Sliding PIR panel doors and furniture to buyers walk

Bollards around doors

PIR wall panels between tenancies

Partition walls between tenancies, including stud work and plasterboard

PIR panel rear wall to mezzanine office

Mezzanine office structural steel and particleboard sheet flooring

Electrical sub-board and meter

EWIS speaker and cabling

Two Cat6a/F/UTP data outlets in the mezzanine office

Ventilation fan and relief-air louvre to mezzanine office

Sprinklers

Smoke detector to underside of mezzanine office and cabling

Heating hot water supply and return take-off points

Heating hot water energy flow meter

Domestic cold water 25mm supply and stop valve

Domestic cold water flow meters

Refrigeration coolant stop valve

Refrigeration coolant heat exchanger unit and pipework to central plant side of stop valve

Glycol coolant energy flow meters

Tenancy identification numbering signage outside mezzanine office

Tenancy identification numbering signage outside Premises in Byers Walk

If installed in the Premises by the Landlord:

- (a) Steel support members to the existing roof structure (to enable supplied refrigeration equipment to be supported / suspended)
- (b) Cool room ceilings
- (c) Fire sprinkler adjustments to suit the new cool room ceiling installations

Schedule 2 – Other expenses

1. Rates and charges

The Tenant must pay direct to the relevant Authority, or if the Landlord requires, must reimburse to the Landlord by the due date, all rates, taxes, levies and charges imposed or separately charged by any Law or Authority against the Premises or the conduct of the Tenant's business in the Premises.

2. Charges for Utilities

- (a) The Tenant must punctually pay to the relevant Authority by the due date all Costs for:
 - (i) electricity, gas, oil and water separately metered and consumed in the Premises;
 - (ii) telecommunication services connected to the Premises; and
 - (iii) all other charges and impositions imposed by an Authority for the supply of a service to the Premises.
- (b) If the Tenant does not punctually pay an account specified in clause 2(a) of this Schedule 2, the Landlord may pay the amount due and in that case the Tenant must promptly repay the amount paid by the Landlord to the Landlord.

3. Electricity and utility supply

- (a) The Landlord may, to the extent permitted by Law, elect to supply the whole or any part of the Tenant's requirements for electricity, gas, water, telephone or any other service normally supplied to the Premises by an Authority.
- (b) If the Landlord makes an election under clause 3(a) of this Schedule 2, the Tenant must pay the Landlord the price for that service that the Landlord specifies. The price must not exceed the price which the Tenant would be required to pay if the Tenant obtained the supply directly from the Authority from which the Tenant would otherwise have obtained it.
- (c) The Landlord is not liable for any Liability that the Tenant or the Tenant's Agents suffer because of any non-supply or failure of, or interruption to, any service provided by the Landlord under this clause due to any cause.
- (d) If the Landlord does provide any service under this clause, the Landlord may elect at any time on 20 Business Days notice to the Tenant to stop supplying the Tenant with that service, so long as that service is available to the Tenant from an Authority.

4. Central Cooling Plant Tariff

- (a) The Tenant may elect to utilise the Landlord's Central Cooling Plant to provide refrigeration services to the Premises.
- (b) If the Tenant makes an election under clause 4(a) of this Schedule 2, the Tenant must pay the Landlord the price for that service that the Landlord specifies from time to time.
- (c) The Landlord is not liable for any Liability that the Tenant or the Tenant's Agents suffer because of any non-supply or failure of, or interruption to, any service provided by the Landlord under this clause due to any cause.

5. Central Heating Plant Tariff

- (a) The Tenant may elect to utilise the Landlord's Central Heating Plant to provide hot water for heating the Premises.
- (b) If the Tenant makes an election under clause 5(a) of this Schedule 2, the Tenant must pay the Landlord the price for that service that the Landlord specifies from time to time.
- (c) The Landlord is not liable for any Liability that the Tenant or the Tenant's Agents suffer because of any non-supply or failure of, or interruption to, any service provided by the Landlord under this clause due to any cause.

Signing page

EXECUTED as a deed.

The Common Seal of Melbourne Market Authority was affixed by authority of the Board in the presence of:

Chief Executive/Secretary



Member



Name (please print)

Name (please print)

[If the Tenant is an individual]

Signed sealed and delivered by **[Name of signatory]** in the presence of

Signature of witness



[name of signatory]



Name of witness (print)

[If the Tenant is a company]

Executed by **[Name of company]** in accordance with Section 127 of the *Corporations Act 2001*

Signature of director



Signature of director/company secretary
(Please delete as applicable)



Name of director (print)

Name of director/company secretary (print)

Annexure A

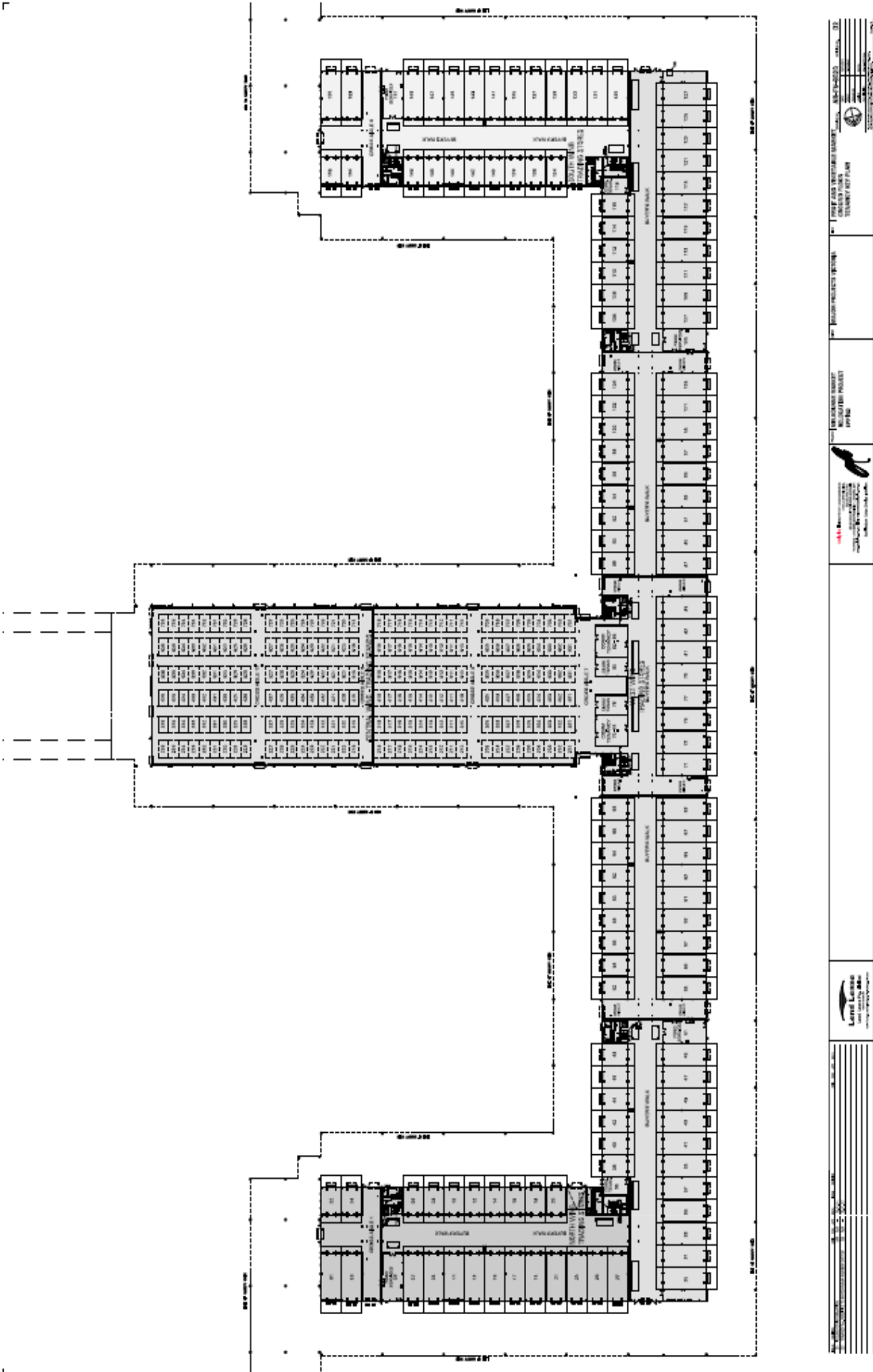
Premises and Licensed Area Plan

Annexure to Store Lease

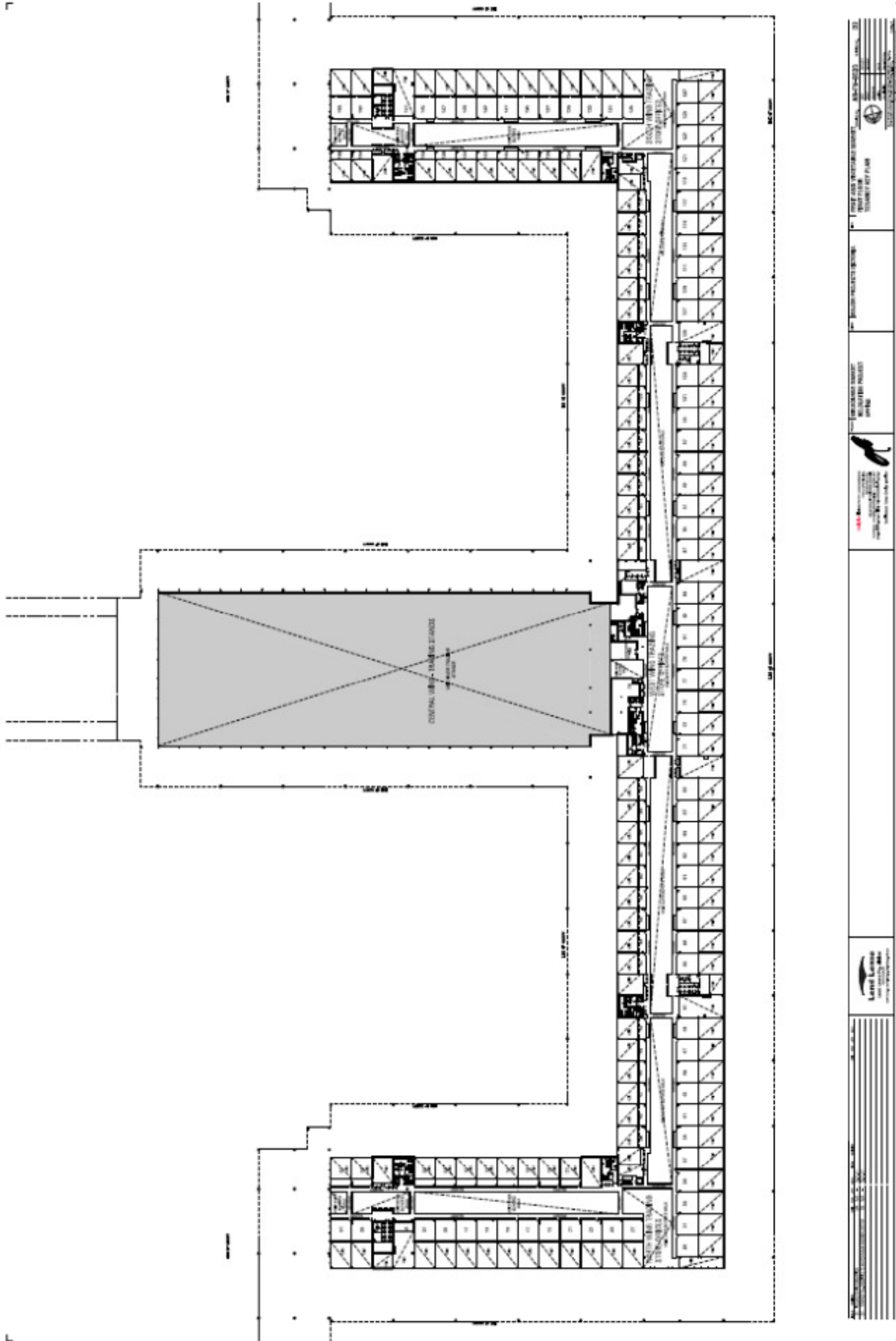
Annexure B

Trading Floor Complex Plan

Annexure to Store Lease



	PROJECT: NEW CANAL MARKET 1000 EAST 10TH AVENUE DENVER, CO 80202 PROJECT NO: ME_95703746_37	ARCHITECT: MINTER ELLISON 1000 EAST 10TH AVENUE DENVER, CO 80202 PHONE: (303) 733-1000 WWW.MINTERELLISON.COM	DATE: 08/14/2007
	DRAWING NO: 01 SHEET NO: 01	PROJECT NO: ME_95703746_37	PROJECT NAME: NEW CANAL MARKET 1000 EAST 10TH AVENUE DENVER, CO 80202
PROJECT NO: ME_95703746_37	PROJECT NAME: NEW CANAL MARKET 1000 EAST 10TH AVENUE DENVER, CO 80202	PROJECT TYPE: RETAIL	PROJECT NO: ME_95703746_37



LEVEL LEASE 10000 SQ. FT. 10000 SQ. FT.	THE GREEN BUILDING INSTITUTE 10000 SQ. FT. 10000 SQ. FT.	GREEN BUILDING INSTITUTE 10000 SQ. FT. 10000 SQ. FT.	GREEN BUILDING INSTITUTE 10000 SQ. FT. 10000 SQ. FT.

Annexure C

Market Land Plan

Annexure to Store Lease

