

Deed Poll

To: **Melbourne Market Authority** and the **State of Victoria** ('State')

Insert name (s): _____ (the **Tenant**) and

(the **Guarantor**) undertake and warrant to the State that they will comply with the following terms and conditions:

1. Defined terms & interpretation

In this Deed Poll unless the contrary intention appears:

- (a) headings are for ease of reference only and do not affect the meaning of this Deed Poll;
- (b) the singular includes the plural and vice versa;
- (c) other grammatical forms of defined words or expressions have corresponding meanings;
- (d) where there are two or more persons bound or to be bound an agreement or obligation binds those persons severally and any two or more of them jointly;
- (e) a reference to a party includes that party's executors, administrators, successors and permitted assigns;
- (f) a reference to a document or deed, including this Deed Poll, includes a reference to that document or deed as novated, altered or replaced from time to time;
- (g) a reference to any thing includes the whole or part of that thing and a reference to a group of things or persons includes each thing or person in that group;
- (h) words and expressions importing natural persons include partnerships, bodies corporate, associations and public authorities;
- (i) **Claims** means any claims, demands, proceedings, suits, causes of action, liabilities, damages, costs (including all legal costs incurred), charges and expenses however arising, whether based in contract, equity, tort or statute and whether involving a third party or a party to this Deed Poll;
- (j) **Existing Market** means the existing Melbourne Wholesale Markets operated under the *Melbourne Market Authority Act 1977* (Vic) at Footscray, Victoria, described as certificate of title volume 10292 folio 668.
- (k) **Melbourne Market Authority** means the statutory body which was incorporated under the *Melbourne Market Authority Act 1977* (Vic) and includes its officers, servants and agents.
- (l) **Proceedings** means proceeding number 9919 of 2006 in the Supreme Court of Victoria at Melbourne – Commercial and Equity Division against the Melbourne Market Authority and proceeding number 6194 of 2011 in the Supreme Court of Victoria at Melbourne – Commercial and Equity Division against the Melbourne Market Authority and the State;
- (m) **New Market** means the new market facility to be developed by the State and to be operated by the Melbourne Market Authority at Epping, Victoria;

- (n) **Related Parties** means the party's employees and agents and, if a corporation, its related bodies corporate and associates (as defined in the Corporations Act 2001 (Cth));
- (o) **State** means the State of Victoria and Melbourne Market Authority;
- (p) **Store** means the store at the Existing Market which is occupied or accessed by the Tenant and which is identified as _____;
- (q) **Sum** means the sum of money the State has agreed, in writing, to pay the Tenant as set out in the letter dated **[insert date]**;
- (r) **Trust** means the trust (if any) which is identified as _____;
- (s) **Trustee** means the trustee (if any) which is identified as _____.

2. Tenant's commitments

2.1 Existing caveat

Upon payment to the Tenant of the Sum, if the Tenant has lodged a caveat over the Existing Market, the Tenant will:

- (a) execute the withdrawal of caveat in the form required by the Land Registry in respect of the caveat lodged by the Tenant over the Existing Market; and
- (b) provide the executed form to the Melbourne Market Authority.

2.2 Non-participation in Proceedings or lodging of future caveat

Subject to the payment to the Tenant of the Sum, the Tenant agrees that:

- (a) it will not take any step, or participate in, as a member of a group or class or otherwise, the Proceedings, whether directly or indirectly;
- (b) it will execute any documents which may be necessary in order to:
 - (i) give effect to clause 2.2(a); or
 - (ii) formally bring the Proceedings to an end; and
- (c) it will not lodge a further caveat over the Existing Market.

2.3 Representations and Warranties

The Tenant and the Guarantor jointly and severally represent and warrant to the Melbourne Market Authority and the State that, as at the date of this Deed Poll:

- (a) the Tenant is the only party who has, or has asserted, any right or interest in the Store;
- (b) other than the Tenant, no other entity/person has, or has asserted, any right or interest in the Store occupied or accessed by the Tenant at the Existing Market;
- (c) the Tenant's right or interest in the Store has not been assigned, transferred, whether in whole or in part, to a third party;
- (d) if this Deed Poll is entered into by a Trustee of a Trust, this Deed Poll binds the Trustee in its personal capacity and in its capacity as Trustee of the Trust;
- (e) the Trustee has full and valid power and authority under the trust to enter into this Deed Poll and to carry out the transactions contemplated by this Deed Poll;
- (f) this Deed Poll does not conflict with the operation or terms of the Trust;

- (g) the Trustee has the right to be indemnified out of, and a lien over, the assets of the trust for all liabilities incurred by it under this Deed Poll, this right has not been limited in any way and the Trustee has no liability which may be set off against that right of indemnity;
- (h) the Trustee enters in this Deed Poll and the transactions evidenced for the proper administration of the Trust and for the benefit of all the beneficiaries of the Trust;
- (i) there has been no resolution or direction to remove the Trustee as Trustee of the Trust;
- (j) the Trustee is the sole Trustee of the Trust; and
- (k) the matters set out in this clause 2.3 will be relied upon by the Melbourne Market Authority and the State.

(collectively '**Representations and Warranties**').

2.4 Indemnity

- (a) Subject to the payment to the Tenant of the Sum, the Tenant and the Guarantor jointly and severally indemnify the Melbourne Market Authority and the State against and in respect of, any loss, damage, costs or expenses which may be suffered or incurred by the Melbourne Market Authority as a result of, whether directly or indirectly:
 - (i) the failure of the Tenant to duly, punctually and fully observe and perform all of its obligations under this Deed Poll; or
 - (ii) a breach of the Representations and/or Warranties; or
 - (iii) the Representations and/or Warranties not being accurate.
- (b) Without limitation, the indemnity referred to in clause 2.4(a) above is intended to operate where a third party (other than the Tenant) asserts or maintains an interest, of whatever nature, in the Store.

2.5 Release and Covenant not to sue

Subject to the payment to the Tenant of the Sum, the Tenant, the Guarantor and each of their Related Parties absolutely and irrevocably release and forever discharge the Melbourne Market Authority and the State from, and covenant not to sue the Melbourne Market Authority or the State in respect of all Claims which they have or may have at any time hereafter against them arising out of, or in any way related to, directly or indirectly:

- (a) the relocation of the Tenant to the New Market or the space allocated to the Tenant at the New Market;
- (b) the withdrawal of the interest claimed in the caveat lodged over the Existing Market in accordance with clause 2 above; and
- (c) the Proceedings.

3. Miscellaneous

3.1 Confidentiality

The terms of this Deed Poll are confidential. A party must not disclose or permit to be disclosed either directly or indirectly the terms of this Deed Poll or details of any discussions or negotiations in relation to this Deed Poll except:

- (a) with the express written consent of the Melbourne Market Authority and the State;
- (b) to the extent required by law;

- (c) on a confidential basis to their insurers (if any) or professional advisers; and
- (d) in the case of breach of any of the terms of this Deed Poll;

3.2 Entire Agreement

This Deed Poll:

- (a) contains the entire agreement and understanding of the parties in relation to the subject matter of this Deed Poll; and
- (b) supersedes all prior communications, whether oral or written, by any officer, employee or representative of any party or the Melbourne Market Authority and the State.

3.3 Severability

Part or all of any provision of this Deed Poll that is illegal or unenforceable may be severed from this Deed Poll and the remaining provisions of this Deed Poll continue in force.

3.4 Absolute Bar

This Deed Poll may be pleaded and tendered by the parties and their Related Parties as an absolute bar and defence to any claim brought in breach of the terms of this Deed Poll.

3.5 Governing law and jurisdiction

This Deed Poll is governed by the laws of the State of Victoria and each party submits to the exclusive jurisdiction of the Courts of Victoria to determine any dispute relating to, either directly or indirectly, the subject matter of this Deed Poll.

3.6 Counterparts

This Deed Poll may be executed in any number of counterparts and all counterparts taken together will constitute one instrument.

3.7 Deed Poll

This Deed Poll takes effect as a deed poll granted by the Tenant and the Guarantor in favour of the State. The State has the benefit of this Deed even though it is not a party to it and has not executed it.

Signing page

EXECUTED as a deed poll on

If Tenant is an individual, sign here:

Signed sealed and delivered by

Name of Tenant: _____
in the presence of

Signature of witness

Name of witness (print)

Signed sealed and delivered by

Name of Guarantor: _____
in the presence of

Signature of witness

Name of witness (print)

If Tenant is a company, sign here:

Executed by

Name of Tenant: _____
in accordance with Section 127 of the
Corporations Act 2001

Signature of director

Name of director (print)

Name of signatory: ←

Name of signatory: ←

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

Name of director/company secretary (print)