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Lease

Land: Part 90-92 High Street, Melton

Melton City Council
and

Victoria State Emergency Service Authority
ABN 61 279 597 238

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Schedule

Item 1.	Council: (Clause 1)	Melton City Council ABN 22 862 073 889 of 232 High Street, Melton, Victoria 3337]
Item 2.	Tenant: (Clause 1)	Victoria State Emergency Service Authority ABN 61 279 597 238 (a body corporate established under s 4 of the <i>Victoria State Emergency Service Act 2005</i>) of 168 Sturt Street, Southbank VIC 2006
Item 3.	Land: (Clause 1)	Part of the land contained in certificate of title volume 10381 folio 887 , being the land identified on the plan attached to this Lease as Annexure B through red cross-hatching and known as 90-92 High Street, Melton, Victoria 3337, including Council's Improvements on the Land (if any)
Item 4.	Commencement Date: (Clause 1)	To be confirmed
Item 5.	Expiry Date: (Clause 1)	To be confirmed
Item 6.	Term: (Clauses 1 & 4)	Ten (10) Years
Item 7.	Further Term(s) (Clauses 1 & 4.2):	Three (3) further term options of ten (10) years each.
Item 8.	Last date for exercising the Option for the Further Term (Clause 4.2.1)	To be confirmed
Item 9.	Rent: (Clauses 1 & 5)	\$1.00 per annum plus GST, payable on demand.
Item 10.	Permitted Use: (Clauses 1 & 13.1)	Activities related to the Tenant's business and associated use of access route.
Item 11.	Special Conditions: (Clauses 1 & 22.5)	The conditions (if any) specified in Annexure A

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Lease

Council leases the Land to the Tenant subject to the terms contained in this Lease.

This Lease is executed as a deed on the _____ day of _____

Signed by and on behalf, and with the authority, of the **Melton City Council** by Kelvin Tori, Chief Executive Officer, pursuant to Instrument of Delegation dated [insert date], in the presence of:

Chief Executive Officer

.....)
Witness)
.....)
.....)
.....)

Signed for and on behalf of **Victoria State Emergency Service Authority** by its authorised representatives:

Signature of authorised representative

Signature of authorised representative

Name of authorised representative (print)

Name of authorised representative (print)

1. Definitions

In this Lease unless expressed or implied to the contrary:

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

Building Act means the *Building Act 1993* (Vic).

Building Regulations means the *Building Regulations 2018* (Vic).

Commencement Date means, subject to clause 2, the date specified in Item 4.

Contamination includes any solid, liquid, gas, radiation, pollutant or substance which makes or may make the condition of the Land or groundwater beneath or part of the surrounding environment:

- (a) unsafe, unfit, poisonous, harmful or potentially harmful to the health, welfare, safety or property of human beings; or
- (b) unsafe, unfit, poisonous, harmful or potentially harmful to animals, birds or wildlife; or
- (c) unsafe, unfit, poisonous, harmful or potentially harmful to plants or other vegetation or
- (d) detrimental to any beneficial use made of the Land; or
- (e) unfit for any use permitted under any applicable planning scheme as amended from time to time,

or which is assessable as being a condition that contravenes any Environmental Protection Legislation.

Council means the council specified in Item 1 and includes Council's successors and assigns and where it is consistent with the context includes Council's employees and agents.

Council's Improvements means all buildings, structures, paving, earthworks, fences, fittings, fixtures and chattels contained on the Land at the Commencement Date or installed by Council during the Term, but excluding the Tenant's Improvements (if any).

Environmental Protection Legislation means any statute, regulation, code, proclamation, ministerial directive, ordinance, by law, planning policy or subordinate legislation, past, present or future, relating to pollutants and contaminants, use of land, human health and safety or protection of the environment.

Essential Safety Measure has the meaning given to that term in the Building Regulations.

Expiry Date means the date specified in Item 5.

Further Term means the further term(s) specified in Item 7.

Hazardous Materials includes all hazardous substances and any pollutant or contaminant defined as such in (or for the purposes of) any Environmental Protection Legislation.

Insolvency Event means:

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- (a) in the case of a natural person, if that person:
 - (i) becomes bankrupt;
 - (ii) assigns the person's estate; or
 - (iii) enters into a deed of arrangement or composition for the benefit of creditors.
- (b) in the case of a corporation, if that corporation:
 - (i) goes into liquidation (including provisional liquidation) other than a voluntary liquidation for the purposes of reconstruction or reorganisation;
 - (ii) is wound up or dissolved or has an application made for its winding up or dissolution;
 - (iii) enters into a scheme or arrangement with or makes an assignment for the benefit of its creditors or any class or classes of them;
 - (iv) is placed under official management;
 - (v) has an agent in possession or a receiver and/or manager or an administrator appointed to the whole or any substantial part of its assets; or
 - (vi) has an inspector or investigator appointed under the *Corporations Act 2001* (Cth).

Item means an item in the Lease Particulars.

Land means the land specified in Item 3.

Lease means this lease and includes all annexures and schedules.

Lease Particulars means the schedule of Items specified on the page at the front of this Lease.

Lease Year means each year of this Lease beginning on the Commencement Date, in consecutive 12 month increments.

Lettable Area(s) means the lettable area of a parcel of land as determined by a surveyor engaged by Council.

Local Government Act means the *Local Government Act 1989* (Vic).

OHS Act means the *Occupational Health and Safety Act 2004* (Vic).

OHS Law means the OHS Act, the OHS Regulations, and any other occupational health and safety law, regulation or by-law that applies to work being carried out on the Land.

OHS Regulations means the *Occupational Health and Safety Regulations 2017* (Vic).

Permitted Use means the use specified in Item 10.

Principal Contractor means the position of principal contractor referred to in Chapter 5 of the OHS Regulations.

Rates and Taxes means the rates, taxes, charges and levies specified in clause 6.1.

Rent means the amount specified in Item 9 as reviewed, adjusted or increased under this Lease.

Small Business Commissioner means the Small Business Commissioner referred to in the Act.

Special Conditions means the conditions (if any) referred to in Item 11.

Tenant means the Tenant specified in Item 2 and includes the Tenant's successors and assigns and where it is consistent with the context includes the Tenant's employees, volunteers, contractors, agents, invitees and persons the Tenant allows on the Land.

Tenant's Improvements means all property on the Land including all fixtures, buildings, fittings, furniture, furnishings (including window coverings, blinds and light fittings), plant, machinery, installations and equipment installed on the Land after the Commencement Date, or any earlier date that the Tenant commenced occupation of the Land, owned or leased by the Tenant, but excluding Council's Improvements (if any).

Term means the term specified in Item 6 and includes any period of overholding.

VICSES means Victorian State Emergency Service Authority ABN 61 279 597 238 (a body corporate established under s 4 of the *Victoria State Emergency Service Act 2005*) of 168 Sturt Street, Southbank VIC 2006.

2. Local Government Act 1989

This Lease is entered into pursuant to section 190 of the Local Government Act.

3. Negotiation and disclosure requirements

Negotiation for Lease

If the Act applies to this Lease, the Tenant acknowledges receiving from Council:

- 3.1.1 a copy of the proposed Lease; and
- 3.1.2 a copy of the information brochure about retail leases published by the Small Business Commissioner,

as soon as the Tenant entered into negotiations with Council, or its agent in respect of this Lease.

Disclosure statement

If the Act applies to this Lease, the Tenant acknowledges having received from Council:

- 3.2.1 a disclosure statement (in the form prescribed by the Act); and
- 3.2.2 a copy of the proposed lease,

at least 7 days prior to the Tenant entering into this Lease.

4. Duration of the Lease**Term**

This Lease is for the Term starting on the Commencement Date.

Option for a Further Term

Council will grant to the Tenant a new lease for the Further Term if the Tenant:

- 4.2.1 gives Council written notice asking for a new lease, not earlier than 6 months or later than 3 months, before the end of the Term (the last date for exercising the option for the Further Term is specified in Item 8);
- 4.2.2 has remedied any breach of this Lease of which the Tenant has received written notice from Council; and
- 4.2.3 has not persistently defaulted under this Lease despite receiving written notice of the defaults from Council.

The new lease for the Further Term will commence on the day after this Lease ends and contain the same terms and conditions as this Lease, with progressively reduced Further Term options and no option for a Further Term where the last option has been exercised, as applicable.

Execution of new Lease for Further Term

The Tenant must execute the new lease for the Further Term and return it to Council within 14 days of receipt from Council.

[VGSO Comment: Inserted to provide the option for the Further Term.]

Holding over

If the Tenant continues to occupy the Land after the Expiry Date with Council's consent, except under a lease arising from the valid exercise of an option to renew, the following provisions will apply:

- 4.4.1 the Tenant will occupy the Land as an annual tenant at a total rental payable monthly in advance being an amount equal to one-twelfth of the aggregate of the Rent and any other money payable by the Tenant to Council under this Lease as at the Expiry Date, the first of the monthly payments to be made on the day following the Expiry Date;
- 4.4.2 as far as applicable, the annual tenancy will otherwise continue on the terms and conditions of this Lease; and
- 4.4.3 either party may terminate the annual tenancy by giving to the other 12 months' notice to the other party expiring on any date.

5. Payment of Rent

The Tenant must:

- (a) pay the Rent to Council in the manner described in Item 9 commencing on the Commencement Date; and
- (b) pay the Rent in the manner specified by Council from time to time.

6. Outgoings**Rates and Taxes**

The Tenant must pay to Council, or the relevant authority:

- 6.1.1 local government rates and charges;
- 6.1.2 water rates and charges, including water usage charges;
- 6.1.3 sewerage and drainage rates and charges;
- 6.1.4 land tax (assessed on a single holding basis) except this cost is excluded where the Act applies to this Lease; and
- 6.1.5 all other rates, taxes, charges and levies assessed in connection with the Land.

Proportion of Rates and Taxes

If any Rates and Taxes are not separately assessed in connection with the Land, the Tenant must pay to Council within 14 days of demand the proportion of the Rates and Taxes that the Lettable Area of the Land bears to the total Lettable Area assessed or such other proportion of the Rates and Taxes as agreed by the parties.

Receipt for payment

The Tenant must provide to Council:

- 6.3.1 copies of all notices, assessments or invoices for any Rates and Taxes received by the Tenant directly from the relevant authority within 14 days of receipt; and
- 6.3.2 receipts for any Rates and Taxes paid by the Tenant within 14 days of request by Council.

7. Other expenses**Services**

The Tenant must, within 14 days of a request by Council:

- 7.1.1 pay for all services in connection with the Land, including electricity, gas, water and telephone services; and
- 7.1.2 where the Land is not separately metered, pay for the cost of installing separate meters to assess the charges for the services,

unless otherwise agreed.

Other charges

The Tenant must pay or reimburse the Council, within 14 days of demand, for the following expenses incurred or payable by Council in respect of the Land (except to the extent that the Act applies and prohibits recovery):

- 7.2.1 charges for cleaning, waste removal and pest control;
- 7.2.2 costs of fire protection and security;
- 7.2.3 insurance premiums and other charges reasonably incurred in connection with insurance policies for damage and destruction to the Council's Improvements;
- 7.2.4 costs of repairing, maintaining and operating the Council's Improvements;
- 7.2.5 costs of improving, renewing or replacing Council Improvements (after being discussed and agreed with the Council); and
- 7.2.6 any other charges necessarily and reasonably incurred by the Council in the operation and management of the Land,

unless otherwise agreed.

Costs and duty

The Tenant must pay to Council within 14 days of demand:

- 7.3.1 the stamp duty payable on this Lease (including penalties and fees);
- 7.3.2 Council's reasonable costs in considering the granting of any consent or approval under this Lease (regardless of whether Council actually gives such consent or approval);
- 7.3.3 the cost of complying with the provisions of the Building Act and the Building Regulations in relation to any Essential Safety Measure;
- 7.3.4 the cost of obtaining Council's mortgagee's consent to this Lease (if required) except this amount is not recoverable where the Act applies to this Lease; and
- 7.3.5 Council's costs (including charges on a solicitor-own client basis) incurred directly as a result of a breach of this Lease by the Tenant,

unless otherwise agreed.

8. GST**Definitions**

In this clause:

- 8.1.1 words and expressions that are not defined in this Lease but which have a defined meaning in the GST Law have the same meaning as in the GST Law; and
- 8.1.2 **GST Law** has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

GST exclusive

Except as otherwise provided by this clause, all consideration payable under this Lease in relation to any supply is exclusive of GST.

Increase in consideration

If GST is payable in respect of any supply made by a supplier under this Lease (**GST Amount**), the recipient will pay to the supplier an amount equal to the GST payable on the supply.

Payment of GST

Subject to clause 8.5 the recipient will pay the GST Amount at the same time and in the same manner as the consideration for the supply is to be provided under this Lease.

Tax invoice

The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST Amount under clause 8.4.

Reimbursements

If this Lease requires a party to reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:

- 8.6.1 the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party is entitled; and
- 8.6.2 if the payment or reimbursement is subject to GST, an amount equal to that GST.

Adjustment events

If an adjustment event occurs in relation to a taxable supply under this Lease:

- 8.7.1 the supplier must provide an adjustment note to the recipient within 7 days of becoming aware of the adjustment; and
- 8.7.2 any payment necessary to give effect to the adjustment must be made within 7 days after the date of receipt of the adjustment note.

9. Payment requirements**No deduction or right of set-off**

The Tenant must pay all amounts due under this Lease to Council (including the Rent and Rates and Taxes).

Interest on late payments

The Tenant must pay to Council on demand interest at the rate per annum equal to the current rate fixed under section 2 of the *Penalty Interest Rates Act 1983 (Vic)* per annum on any money payable by the Tenant under this Lease and remaining unpaid after the due date. Interest will be computed from the date on which such payment became due.

Payment after termination

The Tenant must:

- 9.3.1 make all payments due under this Lease; and
- 9.3.2 provide all information to Council under this Lease to calculate any such payments, even if this Lease has ended.

Method of payment

The Tenant must make all payments under this Lease in such manner as Council reasonably requires, which may include by direct debit.

10. Repairs, refurbishment and alterations**Repairs and maintenance**

The Tenant must:

- 10.1.1 keep the Land, the Council's Improvements and the Tenant's Improvements clean and free from rubbish, store all rubbish in proper containers and have it regularly removed;
- 10.1.2 keep the Land and the Council's Improvements in the same condition as they were in at the date the Tenant first entered occupation of the Land (fair wear and tear excepted);
- 10.1.3 maintain in working order all plumbing, drains, pipes and sewers exclusively servicing the Land;
- 10.1.4 pay the costs (if any) for the removal of waste and sewerage from the Land;
- 10.1.5 maintain any gardens on the Land in good condition and free of weeds;
- 10.1.6 make good any damage caused to any adjacent property by the Tenant; and
- 10.1.7 give Council prompt written notice of any material damage to the Land or anything likely to be a risk to the Land or any person on the Land.

Alterations to Land

The Tenant must ensure any alterations or works to the Land, any services to the Land or the Tenant's Improvements (**Works**) are carried out:

- 10.2.1 in accordance with plans and specifications approved by Council (acting reasonably);
- 10.2.2 by qualified tradespersons approved by Council (acting reasonably); and
- 10.2.3 in accordance with all rules and requirements of any authorities having jurisdiction over the Land.

The Tenant is not required to seek Council's consent prior to making any alterations of a non-structural nature to the Land or the Tenant's Improvements.

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Occupational health and safety

For the purposes of the OHS Law, the Tenant agrees that:

- 10.3.1 the Tenant has sole management and control of the Land and has sole responsibility for ensuring that the Land and the means of entering and leaving them are safe and without risks to health;
- 10.3.2 Council appoints the Tenant as Principal Contractor in respect of all Works to which an OHS Law applies;
- 10.3.3 the Tenant must carry out such Works in accordance with the requirements of the OHS Law; and
- 10.3.4 Council authorises the Tenant to exercise whatever authority is necessary for the Tenant to discharge the responsibilities of the appointment under clause 10.3.2.

Not interfere with services

The Tenant must not interfere, misuse or overload any services to the Land, including electricity, gas and water.

Failure to repair and maintain

If the Tenant does not carry out any repairs, maintenance or other works required under this Lease within 30 days of receiving written notice from Council, Council may enter the Land to carry out such repairs, maintenance and works at any reasonable time after giving the Tenant reasonable notice. The cost of all such repairs, maintenance and works must be paid by the Tenant to Council on demand.

Repairs to Council's Improvements and compliance with legislation

The Tenant must reimburse the Council within 21 days of demand for the costs incurred by the Council in relation to:

- 10.6.1 any repairs or maintenance to the Council's Improvements (but excluding costs for structural works or repairs and maintenance of a capital nature which are the responsibility of Council); and
- 10.6.2 compliance with any legislation (including legislation relating to Essential Safety Measures),

except to the extent that such costs are not recoverable under the Act, where the Act applies to this Lease.

11. Insurance**Public liability insurance**

The Tenant must maintain insurance noting Council's interest as landlord, but not as joint insured, with Victorian Managed Insurance Authority or another insurer approved by Council (acting reasonably) for public liability for the amount of \$20 million concerning 1 single event (or such greater sum as reasonably required by Council).

Tenant's Improvements

The Tenant must insure the Tenant's Improvements for loss and damage from risks including fire and water damage for their full replacement value.

Workers compensation insurance

The Tenant must hold current workers compensation insurance at all relevant times.

Payment and production of policies

The Tenant must pay all insurance premiums on or before the due date for payment and produce to Council copies of the certificate of currency on or before each anniversary of the Commencement Date.

Not invalidate policies

The Tenant must:

- 11.5.1 not do anything which may make any insurance effected by Council or the Tenant invalid, capable of being cancelled or rendered ineffective, or which may increase any insurance premium payable by Council; and
- 11.5.2 pay any increase in the insurance premium caused by the Tenant's act, default or use of the Land.

Requirements by Insurer

The Tenant must comply with all reasonable requirements of Council's insurer in connection with the Land.

12. Release, indemnity and compensation**Release**

The Tenant uses and occupies the Land at its own risk and releases Council from all claims resulting from any damage, loss, death or injury occurring on the Land or as a result of the use and occupation of the Land, except to the extent that such claims arise out any negligent or unlawful act or omission or default of Council or its officers, servants or contractors.

Indemnity

The Tenant must indemnify and hold harmless Council against all claims resulting from:

- 12.2.1 any default by the Tenant under this Lease;
- 12.2.2 any negligent use or misuse by the Tenant of the water, gas or electricity on the Land;
- 12.2.3 any overflow or leakage of water (including rain water) from the Land caused or contributed to by the Tenant's default, breach or negligence; and
- 12.2.4 loss, damage or injury to property or persons caused or contributed to by a negligent or unlawful act or omission of the Tenant or its servants or agents,

except to the extent that such claims arise out of any negligent or unlawful act or omission or default of Council or its officers, servants or contractors.

No compensation

Council is not liable to the Tenant for any loss or damage incurred by the Tenant due to:

- 12.3.1 any damage to the Land;
- 12.3.2 the failure of Council's Improvements or any plant and equipment (including air conditioning and escalators) to operate properly;
- 12.3.3 the interruption or damage to any services (including electricity, gas or water) to the Land; or
- 12.3.4 the overflow or leakage of water on the Land,

except to the extent to which Council is liable where the Act applies and/or by virtue of the negligent or unlawful act or omission or default of Council or its officers, servants or contractors.

No liability

The Tenant acknowledges and agrees that:

- 12.4.1 nothing in this Lease in any way limits, fetters or restricts the power or discretion of Council in the exercise of its statutory rights, duties or powers under the *Planning and Environment Act 1987 (Vic)* or the Local Government Act or the exercise of any other statutory right, power or duty that Council may lawfully exercise; and
- 12.4.2 Council will not be liable to the Tenant under this Lease (including but not limited to a breach of the covenant of quiet enjoyment or a derogation of the grant of this Lease) for any acts or omissions of Council undertaken in any capacity including (but not limited to) in exercising any powers referred to in clause 12.4.1,

except nothing in this clause releases Council from any obligations it owes to the Tenant under this Lease in its capacity as the owner of the Land.

13. Use of Land

Permitted Use

The Tenant must use the Land for the Permitted Use and not use the Land for any other purpose unless the Tenant obtains the prior written consent of Council to a change of use (which must not be unreasonably withheld).

No warranty

The Tenant:

- 13.2.1 acknowledges that Council does not warrant or represent that the Land is suitable for the Permitted Use; and
- 13.2.2 must make its own enquiries as to the suitability of the Land for the Permitted Use.

Illegal purpose

The Tenant must not use the Land for any illegal purpose or carry on an noxious or offensive activity on the Land.

14. Other obligations concerning the Land**Compliance with laws**

The Tenant must comply with all laws and any requirements of any authority in connection with the Land and the Tenant's use and occupation of the Land, except the Tenant will not be required to carry out any structural works unless the need for such works arises from:

- 14.1.1 the negligent act or omission of the Tenant;
- 14.1.2 the failure by the Tenant to comply with its obligations under this Lease; or
- 14.1.3 the Tenant's particular use of the Land.

Licences and permits

The Tenant must maintain all licences and permits required for the Tenant's use of the Land and obtain the prior written consent of Council before varying any licence or permit or applying for any new licence or permit.

Nuisance

The Tenant must not do anything in connection with the Land which may:

- 14.3.1 cause a nuisance or interfere with any other person; or
- 14.3.2 be dangerous or offensive in Council's reasonable opinion.

Signs

The Tenant must seek the prior written consent of Council before displaying or affixing any signs, advertisements or notices to any part of the Land where such signs, advertisements or notices are visible from outside the Land.

Endanger Land

The Tenant must not do or permit anything to be done in connection with the Land which in the opinion of Council may endanger the Land or be a risk to any person or property.

Tenant's employees

The Tenant must use all reasonable endeavours to ensure that the Tenant's employees (including its volunteers), agents, contractors and invitees observe and comply with the Tenant's obligations under this Lease, where appropriate.

Environmental management

At the request of Council, the Tenant must provide Council with any information held by the Tenant relating to the environmental management of the Land including electricity, gas and water use, recycling and disposal of paper and waste, and the materials used in any works

carried out on the Land. Such requests by Council must not be made more than once in a Lease Year.

15. Tenant's environmental obligations**Comply with Environmental Protection Legislation**

The Tenant must, in its use of the Land, comply with all Environmental Protection Legislation and any permit, approval, authority or licence issued pursuant to any Environmental Protection Legislation.

Not permit Contamination

The Tenant must not spill or deposit, or carry out any activities on the Land which may cause any Contamination, or permit any Contamination to escape in any other way into or on the Land, drainage or surrounding environment.

Notify of and clean up Contamination

If any Contamination is found in or near the Land, the Tenant must at its own cost:

- 15.3.1 immediately notify Council, the Environment Protection Authority and any other appropriate Authority;
- 15.3.2 clean up the Contamination unless the Contamination pre-dated the Tenant's occupancy of the Land and do everything necessary to minimise harm; and
- 15.3.3 promptly comply with any notice, order, direction or requirement of Council and of any authority in relation to any such Contamination, or allow Council reasonable access to the Land for the purposes of compliance where the Contamination pre-dated the Tenant's occupancy of the Land.

Indemnify Council

In addition to any other indemnity in this Lease, the Tenant indemnifies Council against all claims for damages, loss, injury or death directly arising out of any Contamination being spilled, deposited or otherwise escaping into or on the Land during the Term, or a breach of this clause by the Tenant (including but not limited to the cost of all fines, penalties and costs of complying with any order or notice associated with such claims) except to the extent that such claims arise out of any negligent or unlawful act or omission or default of Council or its officers, servants or contractors.

16. Dealing with interest in the Land**No parting with possession**

The Tenant must not give up possession of the Land including assigning this Lease, sub-lease the Land or granting to any person a licence or concession in respect of the Land, without Council's written consent.

No assignment if Act to apply

Despite anything to the contrary in this Lease, if the Act does not apply to this Lease and an assignment of this Lease, would result in the Act applying to this Lease, (either during the

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Term or as a result of the grant of a lease for the Further Term) Council may withhold its consent to an assignment of this Lease.

Transfer of functions

Council acknowledges that:

- 16.3.1 VICSES may be reconstituted, renamed or replaced and that some or all of the powers, functions or responsibilities of VICSES may be transferred to or vested in another governmental agency; and
- 16.3.2 if VICSES is reconstituted, renamed or replaced or if some or all of VICSES's powers, functions or responsibilities are transferred to or vested in another governmental agency, references in this Lease to VICSES must be deemed to refer, as applicable, to that reconstituted, renamed or new entity to the extent that it has assumed or has had transferred to it or vested in it those powers, functions or responsibilities.

Mortgage of Lease

The Tenant must not create any security over this Lease, the Council's Improvements or the Tenant's Improvements.

17. Tenant's obligations at the end of this Lease**Tenant's obligations**

At the end of this Lease, the Tenant must:

- 17.1.1 vacate the Land and give it back to Council in a condition consistent with the Tenant having complied with its obligations under this Lease;
- 17.1.2 give to Council all keys and other security devices for the purposes of obtaining access to the Land; and
- 17.1.3 unless Council serves a notice under clause 17.3, remove the Tenant's Improvements and reinstate the Land to the condition the Land was in prior to the installation of the Tenant's Improvements including making good any damage caused by the removal of the Tenant's Improvements

Removal of Improvements

In removing the Tenant's Improvements from the Land, the Tenant must:

- 17.2.1 ensure that the surface of the Land is restored to Council's reasonable satisfaction;
- 17.2.2 follow all reasonable directions given by Council for the removal of the Tenant's Improvements, including (but not limited to) ensuring that all services to the Tenant's Improvements are disconnected; and
- 17.2.3 otherwise comply with the provisions of clause 10.2.

Tenant's notice

The Tenant may give written notice to Council that it elects not to remove all or part of the Tenant's Improvements from the Land. If the Tenant serves a notice under this clause 17.3 and Council consents:

- 17.3.1 ownership of that part of the Tenants Improvements which the Tenant elects not to remove will vest in Council;
- 17.3.2 the Tenant must give the Tenant's Improvements to Council in a condition consistent with the Tenant having complied with its obligations under this Lease; and
- 17.3.3 the Tenant must do all acts and sign all documents as may be required by Council to effect the transfer and vesting of the ownership in the Tenant's Improvements to Council.

Abandonment of Tenant's Improvements

If the Tenant does not serve a notice under clause 17.3 and the Tenant fails to comply with its obligations under clause 17.1, Council may remove the Tenant's Improvements from the Land and comply with the Tenant's obligations under clause 17.1 at the Tenant's expense and may:

- 17.4.1 store the Tenant's Improvements at the Tenant's risk and expense; or
- 17.4.2 treat the Tenant's Improvements as if the Tenant had abandoned its interest in it and it has become the property of Council's and deal with the Tenant's Improvements as it thinks fit without being liable to account to the Tenant.

Australian Consumer Law and Fair Trading Act 2012

The parties agree that this clause 17 is an agreement about the disposal of uncollected goods for the purposes of section 56(4) of the *Australian Consumer Law and Fair Trading Act 2012* (Vic).

18. Council's rights and obligations**Quiet enjoyment**

Council must not interfere with the Tenant's use and occupation of the Land except as provided by this Lease.

Outgoings and insurance

Council must pay all rates and taxes not payable by the Tenant.

Dealing with the Land

Council may:

- 18.3.1 subdivide the Land or grant easements or other rights over the Land except where it will unreasonably interfere with the Tenant's use and occupation of the Land; and

- 18.3.2 install, repair and replace pipes, cables and conduits on or under the Land except where it will unreasonably interfere with the Tenant's use and occupation of the Land.

Entry by Council

Council may enter the Land at any reasonable time after giving the Tenant reasonable notice, to:

- 18.4.1 inspect the condition of the Land;
- 18.4.2 undertake an environmental inspection or accreditation or monitor the environmental management of the Land, including energy and water use; and
- 18.4.3 carry out any inspection, repairs, maintenance, works or alterations on the Land which Council decides to or is required to carry out by any law or authority.

Council must use all reasonable endeavours to cause as little disruption as possible to the Tenant's use of the Land in exercising Council's rights under this clause.

Emergency entry

Council may enter the Land at any time without giving notice to the Tenant in an emergency.

Change in landlord

If a person other than Council becomes entitled to receive the rents reserved by this Lease whether by operation of law or otherwise (**New Landlord**) then:

- 18.6.1 Council is released from all further obligations under this Lease arising after the New Landlord becomes landlord; and
- 18.6.2 the Tenant must at the cost of Council enter into a deed reasonably required by Council under which the Tenant covenants that the New Landlord shall have the benefit of all of the Tenant's obligations under this Lease.

19. Termination of Lease**Re-entry**

Council may re-enter the Land and terminate this Lease if:

- 19.1.1 an Insolvency Event occurs in relation to the Tenant or any Guarantor; or,
- 19.1.2 the Tenant breaches this Lease and does not remedy the breach (or pay reasonable compensation to Council where the breach is otherwise incapable of remedy) within 30 days of receipt of written notice from Council.

Damages following determination

If this Lease is terminated by Council, the Tenant agrees to compensate Council for any loss or damage Council suffers arising in connection with the Tenant's breach of this Lease

Essential terms

The essential terms of this Lease are clauses 5, 6.1, 7.1, 7.3, 8, 10.1, 10.2, 11, 13.1, 13.3, 14, 15, 16 and 17. The breach of an essential term is a repudiation of this Lease.

No deemed termination

If the Tenant vacates the Land, Council will not be deemed to have terminated this Lease merely by the acceptance of keys from the Tenant, entry into the Land for any purpose, or the showing of the Land to prospective tenants or purchasers. This Lease will be deemed to continue until such time as Council gives notice to the Tenant terminating this Lease, or otherwise agrees with the Tenant that this Lease is terminated.

20. Destruction or damage of Land**Reduction in Rent and Outgoings**

If the Land, or any part of the Land is destroyed or damaged to the extent that the Tenant cannot use or have access to the Land (except if the Tenant causes or contributes to the destruction or damage, or the Council's insurer is not legally required to reinstate the Land because the Tenant caused or contributed to the destruction or damage) then the Council will reduce the Rent and the outgoings by a reasonable amount depending upon the nature and extent of destruction or damage until the Tenant can use or have access to the whole of the Land again.

Reinstatement of Land

If the Land or any part of the Land are destroyed or damaged, the Council may, within 6 months from the date of such damage or destruction, give notice to the Tenant:

- 20.2.1 terminating this Lease, where the Council considers that the damage or destruction is such that repairing it is impracticable or undesirable; or
- 20.2.2 that the Council will commence reinstatement of the Land to a condition where the Tenant can use or have access to the Land.

The Council does not have to reinstate the Land.

Tenant's right of termination

Where the Tenant has not caused or contributed to the damage or destruction of the Land and the payment of the insurance for the Land is not refused due to the act or default of the Tenant, provided the Tenant has not previously requested reinstatement of the Land by Council in writing, the Tenant may give written notice to the Council terminating this Lease where the Council does not:

- 20.3.1 give notice to the Tenant pursuant to clause 20.2; or
- 20.3.2 commence reinstatement within 18 months of the date of damage or destruction.

Upon termination of this Lease, each party is released from all further obligations under this Lease, except nothing in this clause releases either party from any breach of this Lease arising prior to the date of termination.

Dispute resolution

If a dispute arises under this clause about the amount of the Rent or outgoings payable by the Tenant, either party may ask the President of the Australian Property Institute (Victorian Division) to nominate a valuer to determine the dispute as an expert. The parties will be bound by the determination of the valuer and will share the fees of the valuer equally.

21. Personal Property Securities Act 2009**Definitions**

In this clause 21:

21.1.1 **Council PPS Items** means any item of Personal Property which:

- (a) is owned or leased by the Council; and
- (b) is situated on the Land at any time during the term of this Lease;

21.1.2 **PPS Act** means the *Personal Property Securities Act 2009* (Cth);

21.1.3 **Tenant PPS Items** means any item of Personal Property which:

- (a) is owned or leased by the Tenant;
- (b) is situated on the Land at any time during the term of this Lease; and
- (c) the Council has the right to require the Tenant to transfer ownership of that item to the Council, or the Tenant has the obligation to transfer ownership of that item to the Council, whether before or after the end of the term of this Lease,

but does not include any Council PPS Items; and

21.1.4 words and expressions that are not defined in this Lease but which have a defined meaning in the PPS Act have the same meaning as in the PPS Act.

Tenant's obligations

The Tenant:

21.2.1 acknowledges that the grant of this Lease also constitutes the grant of a Security Interest in the Council PPS Items in favour of the Council, which interest the Council is entitled to register under the PPS Act; and

21.2.2 must do all things required by the Council from time to time (including, without limitation, signing any documents required by the Council) to enable the Council to register its above Security Interests under the PPS Act, and to otherwise perfect its Security Interest in the Tenant PPS Items and the Council PPS Items so that the Council's Security Interests have priority over any other Security Interests under the PPS Act in relation to the Tenant PPS Items and the Council PPS Items.

Security Interests

The Tenant:

- 21.3.1 warrants that it has not created a Security Interest in respect of any Council PPS Items on or prior to execution of this Lease; and
- 21.3.2 must not create a Security Interest in respect of any Council PPS Items or Tenant PPS Items in favour of any person other than the Council without the Council's prior written consent, which consent may be granted or withheld in the Council's absolute discretion.

Indemnity for breach of this clause

The Tenant must indemnify and hold harmless the Council against all claims, damages or loss incurred by the Council as a direct consequence of any breach by the Tenant of this clause except to the extent that such claims, damages or loss arise out of any negligent or unlawful act or omission or default of Council or its officers, servants or agents.

Further obligations

The Tenant acknowledges and agrees that:

- 21.5.1 it has no right under the PPSA to receive a copy of any 'verification statement' or 'financing charge statement' (as those terms are defined in the PPSA); and
- 21.5.2 on the expiration or earlier termination of this Lease, the Tenant must sign (and procure any holder of a registered Security Interest to sign) any document that the Council considers necessary or desirable under or as a result of the PPS Act to discharge any registered Security Interests under the PPS Act in relation to the Tenant PPS Items and the Council PPS Items.

Clause prevails

In the event of any inconsistency between this clause and any other provision of this Lease, the provisions of this clause will prevail and that other provision will be read down and interpreted accordingly.

22. General**Notices**

Any notice required to be served under this Lease must be in writing and must be served by post, facsimile transmission or hand delivered to:

- 22.1.1 the Tenant at its address set out in this Lease, or any other address notified in writing to Council by the Tenant; and
- 22.1.2 Council at its address set out in this Lease or any other address notified in writing to the Tenant by Council.

Time of service

A notice or other communication is deemed served:

- 22.2.1 if served personally or left at the person's address, upon service;

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- 22.2.2 if posted, three business days after posted;
- 22.2.3 if served by facsimile transmission, subject to the next sub-clause, at the time indicated on the transmission report produced by the sender's facsimile machine indicating that the facsimile was sent in its entirety to the addressee's facsimile machine; and
- 22.2.4 if received after 5.00 pm in the place of receipt or on a day which is not a business day, at 9.00 am on the next business day.

Entire understanding

This Lease and the disclosure statement (if any) contains the entire understanding between the parties as to the subject matter contained in it. All previous agreements, representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter are superseded by this Lease and have no effect.

Waiver

If Council accepts the Rent or any other monies under this Lease (before or after the end of this Lease) or does not exercise or delays exercising any of Council's rights under this Lease, it will not be a waiver of the breach of this Lease by the Tenant or of Council's rights under this Lease.

Special Conditions

This Lease is subject to the Special Conditions. The Special Conditions override any inconsistent provisions in this Lease.

23. Interpretation**Governing law and jurisdiction**

This Lease is governed by and is to be construed in accordance with the laws of Victoria. Each party irrevocably and unconditionally submits to the jurisdiction of the courts of Victoria and waives any right to object to proceedings being brought in those courts.

Persons

In this Lease, a reference to a person includes a firm, partnership, association, corporation or other corporate body.

Joint and several

If a party consists of more than 1 person, this Lease binds them jointly and each of them severally.

Legislation

In this Lease, a reference to a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them.

Clauses and headings

In this Lease:

- 23.5.1 a reference to a clause, schedule or annexure is a reference to a clause, schedule or annexure in or to this Lease; and
- 23.5.2 headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this Lease.

Severance

In this Lease:

- 23.6.1 if a provision is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable; and
- 23.6.2 if it is not possible to read down a provision as required in this clause, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in this Lease.

Number and gender

In this Lease, a reference to:

- 23.7.1 the singular includes the plural and vice versa; and
- 23.7.2 a gender includes the other genders.

No Relationship

No party to this Lease has the power to obligate or bind any other party. Nothing in this Lease will be construed or deemed to constitute a partnership, joint venture or employee, employer or representative relationship between Council and the Tenant. Nothing in this Lease will be deemed to authorise or empower the Tenant to act as agent for or with Council.

Exclusion of statutory provisions

The following statutory provision is excluded from this Lease:

Division 7 of the *Transfer of Land Act 1958* (Vic).

Annexure A Special Conditions

1. Restriction on use

The Tenant must not use the Land wholly or predominantly for the sale or hire of goods by retail or the retail provision of services within the meaning of the Act. This Special Condition is an essential term of this Lease.

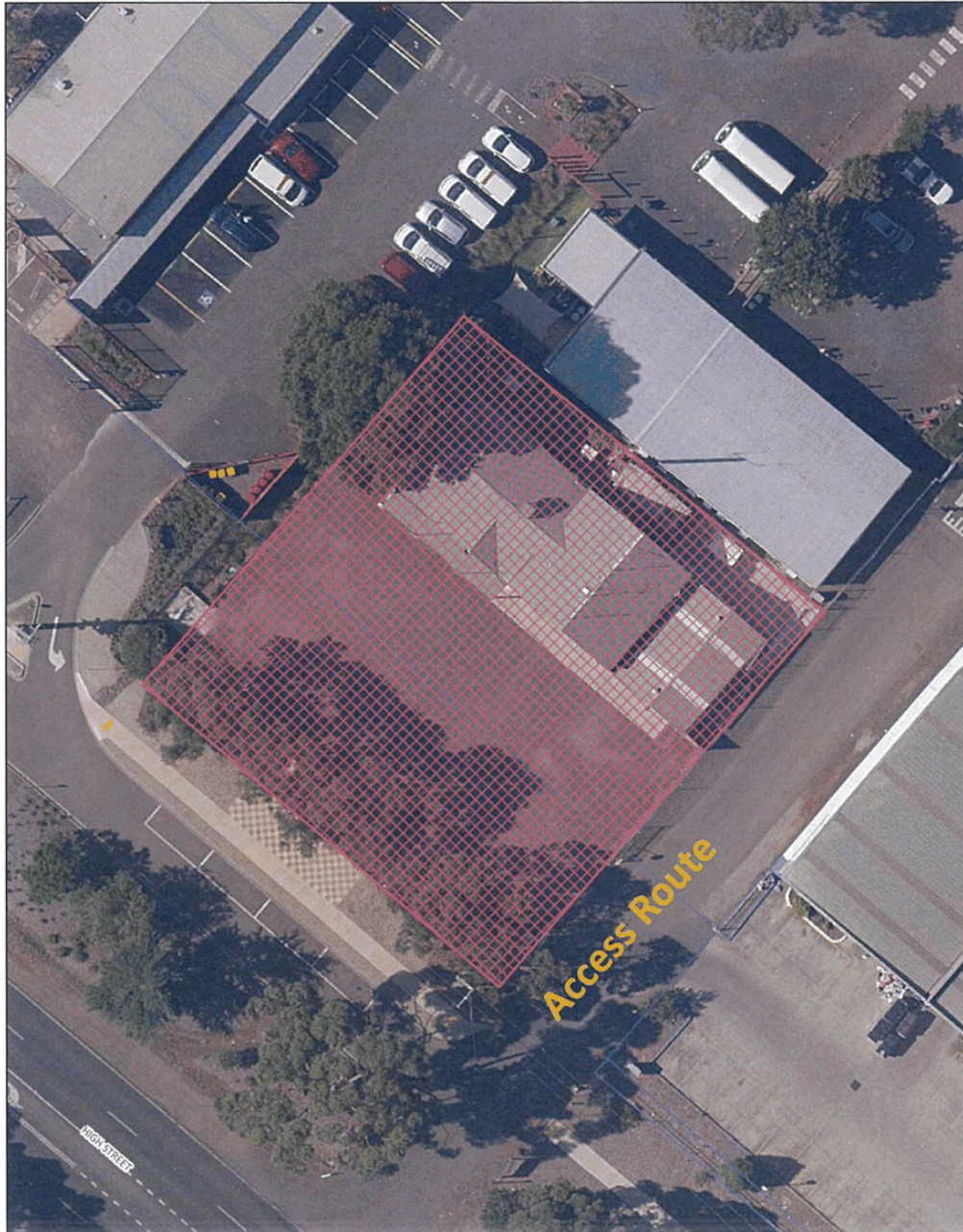
2. Access Routes

- (a) Council grants the Tenant the right during the Term to use the access routes as labelled on the plan annexed to this lease, together with the Council and any other persons Council permits.
- (b) Council must not obstruct, and must ensure that other persons do not obstruct, the access routes at any time.

Annexure B Plan of Land

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