

THIS FIRST RIGHT LICENCE AGREEMENT made the _____ day of _____ 200

BETWEEN MELBOURNE MARKET AUTHORITY, 542 Footscray Road, West Melbourne 3003
(the "Authority")

AND THE LICENSEE

RECITALS

- A. The Authority is the registered proprietor of the Market Land.
- B. The Authority has agreed to grant the Licensee a first right licence to occupy the Stand described in this Licence on the terms and conditions contained in this Licence.

THE PARTIES AGREE AND DECLARE AS FOLLOWS:

1. GRANT

- 1.1. In consideration of the Licence Fee and of the terms covenants and conditions contained in this Licence the Authority grants and the Licensee accepts a Licence to occupy the Stand from month to month commencing on the Commencement Date on the Days and on the terms and conditions contained in this Licence.
- 1.2. The Licensee acknowledges and agrees that the licence to occupy granted by this Licence is personal to the Licensee and the Licensee cannot (with the exception of Clause 6) assign, licence, sub-licence, transfer, dispose of or otherwise deal with all or any part of its rights, benefits or obligations under this Licence or in favour of any other person, and any and all rights of the Licensee rest in contract alone and that the Licensee has no estate or leasehold interest of any description whatsoever in the Stand or any rights referred to in Section 42 of the *Transfer of Land Act 1958*.

2. INTERPRETATION

In this deed, unless the context otherwise requires:

"Act" means the Melbourne Market Authority Act 1977 as amended from time to time;

"Authority" includes any person claiming through or under the Authority;

"By-Laws" means any by-laws made or to be made by the Authority pursuant to the Act;

"Commencement Date" means the date specified in the Schedule;

"Day" or "Days" means the days or any of them specified in the Schedule;

"Flower selling floor" means the selling area comprising the Stand and the other stands designated by the Authority from time to time for the sale of flowers in the National Flower Centre;

"Licence Fee" means the amount specified in the Schedule subject to variation in accordance with clause 5 of this Licence;

"Licensee" means the person or corporation described in the Schedule and includes the permitted assigns of the Licensee and if the Licensee is a corporation includes its successors and if the Licensee is a natural person includes the heirs executors and administrators of the Licensee;

"Market Land" means the market land as defined in the Act;

"National Flower Centre" means the flower market located on the market land containing the flower selling floor;

"Nominee" means where the Licensee is a corporation the natural person who is nominated by the Licensee to be responsible to the Authority for performance of the obligations and covenants of the Licensee under this Licence and who is described in the Schedule;

"Office" means an Office building erected on the Stand by the Authority and owned by the Licensee;

"Permitted Use" means the use specified in the Schedule;

"Roller door" means a roller door giving external access and egress to the Stand (if any);

"Schedule" means the schedule attached to this Licence;

"Second Right Licence" means a licence issued by the Authority (provided there is no Office on the Stand) which gives a person second priority after the Licensee to occupy the Stand;

"Second Right Licensee" means the person (if any) with the Second Right Licence;

"Stand" means the stand described in the Schedule and located on the flower selling floor and the Office (if any); and

"Trading Hours" means those hours specified in the By-Laws or as set by the Authority from time to time.

3. LICENCE FEE

3.1 The Licensee agrees to pay quarterly in advance the Licence Fee to the Authority on the commencement date, and then on the first day of each successive quarter;

3.2 Notwithstanding the provisions of Clause 3.1, the Licensee may elect to pay the Licence Fee monthly in advance Provided That the Licensee first makes direct debit payment arrangements or such other arrangements as approved by the Authority;

3.3 If the Licensee fails to pay the Licence Fee in accordance with its obligations under Clause 3.2 or the payments are dishonoured, the Licensee will pay the Licence Fee in accordance with Clause 3.1

4. OCCUPATION

4.1 The Licensee must subject to clause 4.6 occupy the Stand on the Days and during the Trading Hours.

4.2 If on any Day the Stand has not been occupied by the Licensee by the time designated from time to time by the Authority prior to commencement of trading on that Day, the Authority may without being in breach of this Licence authorise at its discretion any other person to occupy the Stand.

4.3 Where the Authority has authorised the Second Right Licensee or any other person to occupy the Stand, the Licensee will not be permitted to occupy the Stand on that Day.

4.4 The Authority reserves the right to deny the Licensee access to the Stand where moneys are owed by the Licensee to the Authority, whether or not a formal demand has been made.

4.5 The Authority reserves the right temporarily or permanently to relocate the Licensee to another stand, and the Licensee may not make any claim for compensation,

4.6 The Authority reserves the right to deny the Licensee access to the Stand at any time and from time to time in its sole discretion, and the Licensee must continue to pay the Licence Fee and may not make any claim for compensation.

5. REVIEW OF LICENCE FEE

- 5.1 The Licence Fee will be increased annually as from the Commencement Date by the Authority by one month's written notice, and notice of any variation is deemed to have been brought to the attention of the Licensee if given in accordance with Clause 14, and/or notification in the relevant tax invoice.
- 5.2 Where the Authority has given the Licensee written notice of the increased Licence Fee, then the Licence Fee payable under this Licence will be varied and payable effective from the next quarter.

6. ASSIGNMENT

The Licensee may assign this Licence provided that :

- 6.1 the Authority has given its prior written consent to the assignment which may be withheld in its sole discretion;
- 6.2 the Licensee pays to the Authority a consideration equal to one year's Licence Fee;
- 6.3 the Licensee pays to the Authority its reasonable expenses as determined by the Authority from time to time;
- 6.4 if the Stand is a Truck Stand, the Licensee's right to park a motor vehicle upon the Stand will cease immediately and without written notice upon assignment of this Licence; and
- 6.5 Section 146 of the Property Law Act 1958 (if applicable) does not apply to this Licence.

7. LICENSEE'S COVENANTS

The Licensee for itself and its servants agents employees and invitees covenants and agrees with the Authority as follows:

- 7.1 to use the Stand for the Permitted Use and for no other use;
- 7.2 if the Licensee is a company, that the Nominee will perform and observe and comply with the terms and conditions of this Licence and any breach of same by the Nominee will constitute a breach by the Licensee;
- 7.3 to keep the Stand and the Office (if any) clean, tidy and in good condition, and not to make any alterations or carry out any building or other works to the Stand or the Office or erect any building or structure on the Stand without the prior written consent of the Authority;
- 7.4 to observe and comply with all rules and regulations made from time to time by the Authority in relation to the Stand or the Market Land including the By-Laws, the Act and all other statutes and regulations, and to obtain all necessary consents and approvals for the conduct of the Licensee's business and the use of the Stand for the Permitted Use;
- 7.5 not to cause any nuisance damage obstruction annoyance or inconvenience to the Authority or any other users of the Market Land;
- 7.6 that this Licence is personal to the Licensee and the Licensee shall not in any way (except in accordance with Clause 6) dispose of any interest in this Licence or part with or share possession of the Stand;
- 7.7 to remove from the Stand at the end of trading on each Day all property of the Licensee and any property left on the Stand not placed inside the Office at the end of trading on each Day shall be abandoned and become the property of the Authority;
- 7.8 to remove from the Stand at the end of trading on each Day all waste and dispose of it in the receptacles designated by the Authority from time to time;

- 7.9 to produce to the Authority upon demand evidence of its right to hold this Licence;
- 7.10 to provide to the Authority on demand a list of the names and addresses of all persons selling goods from the Stand;
- 7.11 to give the Authority written notice within seven days of any change of its employees;
- 7.12 if the Licensee is a company, to give the Authority written notice of any proposed change in the Nominee, in which case before the Authority consents to a change of Nominee the new Nominee must execute a Licence in the form of this Licence and deliver this to the Authority;
- 7.13 if the Licensee is a company to give the Authority written notice within seven days of any change in shareholders or directors, and any change which affects 51% of the company shareholding will be deemed to be an assignment of this Licence to which the provisions of Clause 6 apply;
- 7.14 to take out and maintain a Public Risk Insurance Policy in respect of the Licensee's occupancy of the Stand in the name of the Licensee and noting the interest of the Authority for public risk for any single event for the amount of \$20 million, or such other amount as required by the Authority from time to time;
- 7.15 not to bring or cause to be brought into or left within the National Flower Centre during the Trading Hours any motor vehicle, trailer, forklift, motorised or mechanical trolley or wheeled apparatus of any description except:
 - 7.15.1 where the Stand is a Truck Stand, then the Licensee may prior to commencement of trading, bring into the National Flower Centre and park within the Stand a motor vehicle and trailer (which must at all times remain attached to the motor vehicle) the combined length of which must not exceed seven (7) metres ; or
 - 7.15.2 where the Licensee has obtained specific prior approval of the Authority, flower display trolleys which do not exceed two point seven (2.7) metres in height.
- 7.16 to repair and maintain the roller door (if any) in good order and condition and if lockable, to keep it locked when the Licensee is not occupying the Stand;
- 7.17 if an Office has been erected on the Stand, the Licensee will remove the Office from the Stand at the date of termination or assignment (unless otherwise agreed with the Authority) of this Licence; and restore the Stand to its condition as it existed at the commencement date of the Licence;
- 7.18 if the Stand has an Office, to pay all charges connected with the maintenance and operation of the Stand and all licence, permit and inspection fees and all excess water and all gas, telephone, electricity and power charges assessed or charged on or in respect of the Stand or the Licensee's use of the Stand as and when they become due;
- 7.19 not to store or place any item or goods whatsoever on the roof of the Office (if any);
- 7.20 not to erect or place any structure whatsoever whether permanent or temporary on the Stand;
- 7.21 the Licensee must observe and comply with all directions given and notices displayed by the Authority in connection with the day to day use and operation of the Stand;
- 7.22 the Licensee must not do anything which will make void or voidable any policy of insurance;
- 7.23 to comply at all times with the provisions of the relevant Occupational Health & Safety legislations; and
- 7.24 to comply with at its cost and expense all reasonable directions, requirements and conditions that may from time to time be made as imposed on the Licensee or its employees.

8. RISK, RELEASE AND INDEMNITY

- 8.1 The Licence is granted upon the express condition that the Authority shall under no circumstances be liable or responsible in any manner whatsoever for any loss accident damage death or injury to the Licensee or to any other person which may happen within or about the Stand and Market Land from any cause whatsoever whether or not in connection with the Licensee's business, use or occupation of the Stand.
- 8.2 The Authority shall not incur or be under any liability whatsoever to the Licensee or any other person for any loss damage or injury of, to or in respect of any stock or other property of the Licensee or any other person.
- 8.3 The Licensee indemnifies and will keep indemnified the Authority and its employees, agents, successors and assigns from and against any actions claims costs liabilities and other expenses whatsoever or howsoever arising out of or in connection with :
- 8.3.1 the Licensee's use or occupation of the Stand and Market Land (including the Permitted Use);
- 8.3.2 the Licensee's breach of any one or more terms and conditions of this Licence; or
- 8.3.3 the Licensee's breach of any law, regulation or other order or any omission by the Licensee in relation to the use of the Stand or the Market Land.

9. TERMINATION

- 9.1 The Authority may terminate this Licence by three (3) month's written notice to the Licensee and the Licensee may terminate this Agreement by thirty (30) days written notice to the Authority.
- 9.2 The Authority may terminate this Licence by seven (7) days written notice to the Licensee in any of the following circumstances:
- 9.2.1 the Licence Fee or any part is in arrears;
- 9.2.2 in the event of any failure omission or breach by the Licensee in performing or observing the terms and conditions of this Licence;
- 9.2.3 the Licensee breaches the Act, the By-Laws, or contravenes any direction by the Authority; or
- 9.2.4 the Licensee being a company goes or is put into liquidation voluntary or compulsory (save for the purposes of reconstruction) or has a receiver, a receiver and manager, an official manager or administrator appointed or makes an assignment for the benefit of or enters into an arrangement or composition with its creditors or execution is levied against the Licensee and not discharged within thirty days or the Licensee becomes bankrupt.
- 9.3 The Authority's right to terminate this Licence in accordance with Clauses 9.1 and 9.2 is in addition and without prejudice to any other rights and remedies that it may have arising out of or in connection with any breach by the Licensee of any term or condition of this Licence.

10. COSTS

- 10.1 The Licensee shall pay to the Authority all costs charges and expenses of and incidental to the preparation, completion and execution of this Licence as determined by the Authority from time to time.
- 10.2 The Licensee must pay the Authority's costs of and incidental to:
- 10.2.1 any consent required under this Licence;

- 10.2.2 any change, surrender or ending of this Licence except where the change occurs at the Authority's request;
- 10.2.3 the exercise or attempted exercise by the Authority of any right or remedy against the Licensee; and
- 10.2.4 any breach of this Licence by the Licensee.

11. REPRESENTATIONS AND WARRANTIES

The Licensee acknowledges that the Authority has made no representations nor given any warranties that:

- 11.1 the Stand is or will remain suitable or adequate for the Permitted Use; or
- 11.2 the Permitted Use may lawfully be carried on in the Stand

and the Licensee is deemed to have satisfied itself in this regard. This Licence is subject to the Licensee obtaining all relevant local authority permits in respect of its occupation and use (including the Permitted Use) of the Stand.

12. WHOLE AGREEMENT

No verbal statements made or written documents given by the Authority to the Licensee form part of this Licence.

13. GOODS AND SERVICES TAX (GST)

13.1 "GST" means "GST" within the meaning of the GST Act.

"GST Act" means A New Tax System (Goods and Services Tax) Act 1999 (Cth) (as amended).

Expressions used in this Clause 13 have the same meanings as used in the GST Act.

13.2 The amounts payable and consideration provided under or in respect of this Licence (other than under Clause 13.3) are GST exclusive.

13.3 The recipient of a taxable supply made under or in respect of this Licence must pay to the Supplier, at the time the consideration of the supply is due, the GST payable in respect of the supply. This obligation extends to supply consisting of a party entry into this Licence.

13.4 An amount payable by the Licensee in respect of a creditable acquisition by the Authority from a third party must not exceed the sum of the value of the Authority's acquisition and the additional amount payable by the Licensee under Clause 13.3 on account of the Authority's GST liability.

13.5 A party is not obliged, under Clause 13.3 to pay the GST on a taxable supply to it under this Licence, until given a valid tax invoice for the supply.

14. NOTICE

14.1 A notice given under this Licence may be given –

- 14.1.1 by post;
- 14.1.2 by facsimile; or
- 14.1.3 by delivery;

to the party's last know address; or

14.1.4 registered office; or
14.1.5 if to the Licensee, at the stand.

14.2 Posted notices will be taken to have been received 72 hours after posting unless proved otherwise.

14.3 Notices delivered or sent by facsimile after 5.00pm will be taken to have been received at 9.00am on the next business day at the place where it is received.

SCHEDULE

Stand: ***
outlined in red on the attached plan

Licensee: ***
of ***

Nominee: ***

Days: Monday to Saturday inclusive

Commencement Date: ****

Licence Fee: (1) \$ per annum for the Stand
(2) \$ per annum for the roller door
subject to review of the Licence Fee in accordance with Clause 5.

Permitted Use: Sale of flowers and plants
and other such goods as the Authority may from time to time permit.

Executed as a Deed

THE COMMON SEAL OF)
MELBOURNE MARKET AUTHORITY)
is affixed by authority of the Board)
in the presence of:)

.....)
Chief Executive/Secretary) Member

EXECUTED by)
*** **(ACN ***)**)
being authorised by those persons who are)
authorised under its constitution to sign)
for the company:)

..... Director (please sign)
..... Full Name (please print)
..... Address
.....

..... Company Secretary or other Director (please sign)
..... Full Name (please print)
..... Address
.....

SIGNED, SEALED AND DELIVERED)
BY)
in the presence of:)

.....

.....
Witness

Name (printed)