

Final Draft

Date: 18 April 25 February
2013

Standard Agreement for Lease

[Store – insert details]

Wholesale Fruit and Vegetable Market

Melbourne Market Authority (**Landlord**)

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

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

[Note to Tenants:

1. The Agreement provides for the following items to be inserted prior to execution:

- (a) the Tenant's particulars on the front page, the Information Table and the signing page;**
- (b) the Guarantor's particulars on the front page, the Information Table and the signing page;**
- (c) a description of the Premises on the front page and in item 2;**
- (d) the Rental Amount in item 3;**
- (e) the gain of space particulars in optional clause 17;**
- (f) a copy of the Lease as Annexure A;**
- (g) a plan of the Market Land as Annexure B; and**
- (h) a copy of the Tenancy Fit Out Guide as Annexure C.**

2. The Agreement for Lease contains an optional clause 19 (Gain of Store Space).

Standard Agreement for Lease

Information table	5
Agreed terms	8
1. Defined terms & interpretation	8
1.1 Defined terms	8
1.2 Interpretation	12
1.3 Headings	13
1.4 Governing law and jurisdiction	13
1.5 Definitions in the Lease	13
1.6 Definitions in the Tenancy Fit Out Guide	13
2. Landlord's Works	13
2.1 Landlord's obligation	13
2.2 Delivery of Premises	13
2.3 Landlord to notify of the Handover Date and the Commencement Date	13
2.4 Date extended	13
2.5 Variations to Landlord's Works	14
2.6 Certificate of Practical Completion	14
2.7 Tenant's acknowledgment	14
2.8 Tenant will not object	15
3. Tenant Works Plans	15
3.1 Tenant Works Plans must comply with requirements	15
3.2 Submission of Tenant Works Plans	15
3.3 Landlord's response	15
3.4 Amendment of the Tenant Works Plans	16
3.5 Obtaining Approvals	16
3.6 Responsibilities	16
4. Tenant Works	16
4.1 Before commencing Tenant Works	16
4.2 Access	17
4.3 Right of access only	17
4.4 Carrying out the Tenant Works	18
4.5 Environmental Management Plan	19
4.6 Tenant not to affect warranties	19
4.7 Category B Works	19
4.8 Insurances	19
4.9 Responsibility for Tenant Works	19
4.10 Completion of the Tenant Works	20
4.11 Works, finishes and defects	20
4.12 Ownership of Tenant Works	20
4.13 Tenant to pay	20
4.14 Access by others	20
4.15 Decision of Landlord and Tenancy Coordinator	20

4.16	Landlord's rights	21
4.17	Tenant's failure to complete	21
5.	Principal Contractor	21
5.1	Defined terms	21
5.2	Tenant's appointment	21
5.3	Tenant's obligations	22
6.	Indemnities and releases	22
6.1	Tenant's indemnity	22
6.2	Tenant's release	22
6.3	No liability for delay or extension of time	23
6.4	Tenant's risk	23
7.	Possession by Tenant	23
7.1	Requirements before Tenant takes possession under the Lease	23
7.2	Conducting business	23
7.3	Base Rent reduction	24
8.	Grant of Lease	24
8.1	Grant	24
8.2	Delivery of documents and monies	24
8.3	Escrow	24
8.4	Completion of Lease	25
8.5	Parties bound	25
8.6	Caveats	25
9.	Security Amount	25
9.1	Tenant must provide Security Amount	25
9.2	When Landlord may call on Security Amount	25
9.3	Reinstatement of Security Amount	26
9.4	Replacement Insurance Bank Guarantee and Bond	26
9.5	Change in ownership	26
10.	Termination	26
10.1	Termination for Tenant's default	26
10.2	Consequences of termination	26
10.3	Recovery of money	27
11.	Assignment	27
11.1	Assignment by Tenant	27
	Assignment	27
11.3	Change in control of the Tenant	28
11.4	Landlord's Rights on Deemed Assignments	28
11.5	Assignment by Landlord	29
12.	GST	29
12.1	Interpretation	29
12.2	Consideration is GST exclusive	29
12.3	GST gross up	29
12.4	Reimbursements	29
12.5	Tax invoice	29

13. Notices	29
13.1 Service of notices	29
13.2 Effective on receipt	29
14. No representation or inducement	30
15. Guarantee and indemnity	30
15.1 Guarantee and indemnity	30
15.2 Extent of guarantee and indemnity	31
15.3 Waiver by Guarantor	31
15.4 Guarantor not to Claim	31
15.5 Costs and interest	32
15.6 Assignment	32
15.7 Avoidance of deed	32
15.8 Defined terms	32
16. General	32
16.1 Alterations and waivers	32
16.2 Approvals and consents	32
16.3 Counterparts	32
16.4 No merger	33
16.5 Inconsistencies	33
16.6 Further action	33
16.7 Severability	33
16.8 Waiver	33
16.9 Relationship	33
16.10 Costs	33
16.11 Interest on overdue money	33
16.12 Disclosure of information	33
16.13 Entire deed	33
17. This deed ends if the Head-Lease ends	34
18. Landlord's Fitout Works	34
18.1 Tenant's election	34
18.2 Landlord's Fitout Works Items included in the Landlord's Works	34
19. Increased Space Contribution [<i>Optional Clause</i>]	35
19.1 Definitions	35
19.2 Acknowledgement	35
19.3 Payment of Increased Space Value	35
19.4 Amount of Increased Space Contribution	36
19.5 Obligation not passed onto incoming party	36
Signing page	37
Signing page	37

Information table

Date

Parties

Name	Melbourne Market Authority , a body corporate established under section 4 of the <i>Melbourne Market Authority Act 1977</i> (Vic)
ABN	56 160 141 887
Short form name	Landlord
Notice details	[To be inserted] Facsimile: [To be inserted] Attention: [To be inserted]
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]
Name	[To be inserted]
ABN	[To be inserted]
Short form name	Guarantor
Notice details	[To be inserted] Facsimile: [To be inserted] Attention: [To be inserted]

Items

Item 1	Date for Practical Completion (clause 1.1) 31 October 2013
Item 2	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 attached as Annexure A to the Lease (excluding the areas marked 'Display Area' and 'Sorting Area' on that plan), the boundaries of which are: <ul style="list-style-type: none"> (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 3

Base Rent (clause 1.1)

\$(#) per annum

Item 4

Increase in Base Commencing Rent (clause 1.1)

For the purposes of determining the Commencing Rent, the Base Rent will be increased during the period from the date of this deed until the Commencement Date on each Base Rent Review Date by the greater of:

- (a) the CPI Rate; and
- (b) 4% per annum.

In this deed, 'Base Rent Review Date' means:

- (c) each anniversary of the Base Date; and
- (d) the Commencement Date.

~~An amount equal to the Base Rent increased by the greater of the CPI Rate and 4% on each anniversary of the Base Date until the Commencement Date~~

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 has agreed to grant the Lease to the Tenant and the Tenant has agreed to accept the Lease on the terms contained in this deed.
- D The Guarantor has guaranteed to the Landlord the performance of the Tenant's obligations under this deed.

Compare

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In this deed:

Approvals means all necessary approvals, consents, permissions and licences of all relevant Authorities which must be obtained to carry out the Landlord's Works or the Tenant Works (as the case may be), or both.

Authority means the Crown, a government, a minister of a government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity or any consultant or representative acting on behalf of these bodies.

Bank Guarantee means an irrevocable and unconditional undertaking on terms acceptable to the Landlord by a bank approved by the Landlord (or, at the Landlord's discretion, another financial institution) carrying on business in Melbourne, Australia requiring the bank (or other financial institution) to pay on demand whether by one or more requests the Security Amount (and includes any replacement or addition to it under clause 9).

Base Date means 13 December 2012.

Base Rent means, subject to clause 7.3 and clause 18.2, the amount per annum set out in Item 3.

Base Rent Review Date has the meaning given to the term in Item 4.

Certificate of Practical Completion means a certificate issued by the Landlord's Consultant stating that the Landlord's Works have been constructed in accordance with this deed and have reached Practical Completion.

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 deed; and
- (e) an adjustment to money due to the Landlord under this deed.

Commencement Date means the commencing date of the Term of the Lease, being the later of:

- (a) the Common Opening Date; and
- (b) the date which is 4 months after the Handover Date,

as may be extended under clause 2.4.

Commencing Rent means the Rent per annum payable by the Tenant for the first year of the term of the Lease, being the Base Rent as increased as calculated in accordance with Item 4.

Common Opening Date means the date notified by the Landlord from time to time as the day on which all or the majority of the premises forming part of the Trading Floor Complex must commence trading (as may be extended under clause 2.4).

Construction Works means:

- (a) the works carried out by or on behalf of the Landlord in the construction and development of the Trading Floor Complex, whether before or after the date of this deed and includes the Landlord's Works; and
- (b) any works undertaken by or on behalf of the Landlord on the Market Land or any land adjoining the Market Land.

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 ~~Base Commencing~~ Rent was ~~increased~~ under reviewed (or the date of this deed (or the Base Date if there has been no intervening review) to the CPI for the quarter ending immediately before the relevant Base Rent Review Date, expressed as a percentage.

Date for Practical Completion means the date in Item 1 (as may be extended under clause 2.4).

Deposit Payment means an amount equal to the sum of the estimated Commencing Rent for the first month of the Term.

Environmental Management Plan means the Landlord's environmental management plan, if any, for the Market Land.

Handover Date means the earlier of:

- (a) the date the Tenant gains access the Premises to carry out the Tenant Works; and
- (b) the Nominated Handover Date.

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 **INSERT** 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.

Hoardings means the temporary barriers, fences, enclosures, barricades, booms and other like structures on the Premises in order to prevent public access to parts of the Premises.

Item means an item appearing in the Information table.

Insolvency Event means the happening of any of these events:

- (a) an order is made that a body corporate be wound up;
- (b) a liquidator or provisional liquidator in respect of a body corporate, or one of them is appointed, whether or not under an order;

- (c) except to reconstruct or amalgamate while solvent on terms approved by the Landlord, a body corporate enters into, or resolves to enter into, a scheme of arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them;
- (d) a body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent on terms approved by the Landlord or is otherwise wound up or dissolved;
- (e) a body corporate is or states that it is insolvent;
- (f) as a result of the operation of section 459F(1) of the *Corporations Act 2001* (Cth), a body corporate is taken to have failed to comply with a statutory demand;
- (g) a body corporate is, or makes a statement from which it may be reasonably deduced by the Landlord that the body corporate is, the subject of an event described in section 459C(2)(b) or section 585 of the *Corporations Act 2001* (Cth);
- (h) a body corporate takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to a body corporate; or
- (i) a person becomes an insolvent under administration as defined in section 9 of the *Corporations Act 2001* (Cth) or action is taken which could result in that event; or

anything analogous or having a substantially similar effect to any of the events specified above happens under the Law of any applicable jurisdiction and including without limitation deregistration or dissolution.

Insurance Bond means an irrevocable and unconditional undertaking on terms acceptable to the Landlord by an insurance company approved by the Landlord carrying on business in Melbourne, Australia, requiring the insurance company to pay on demand whether by one or more requests the Security Amount (and includes any replacement or addition to it under clause 9).

Landlord's Consultant means any architect, engineer, building surveyor, valuer or employee of the Landlord or other person at any time appointed by the Landlord to be responsible for supervising or managing the Landlord's Works and/or the Tenant Works and includes the Tenancy Coordinator.

Landlord's Fitout Works Items includes any or all of the following (at the Tenant's election):

- (a) steel support members to the existing roof structure (to enable supplied refrigeration equipment to be supported / suspended);
- (b) cool room ceilings; and
- (c) fire sprinkler adjustments to suit the new cool room ceiling installations.

Landlord's Fitout Works Rent means the additional rent per annum payable by the Tenant as a result of the Landlord installing the Landlord's Fitout Works Items in the Premises, being the total amount set out in the notice provided by the Landlord under clause 18.1(a) for each of the items installed in the Premises by the Landlord as required by the Tenant in accordance with clause 18.

Landlord's Works means:

- (a) the construction of the Trading Floor Complex as required under the design and construction contract between the Head-Landlord and Bovis Lend Lease Pty Ltd dated 17 March 2010, as varied; and
- (b) any of the Landlord's Fitout Works Items installed in the Premises as required by the Tenant in accordance with clause 18.

Law means all laws, including under common law, equity and statute and any regulation, order, rule, subordinate legislation or other document enforceable under any statute, regulation, order, rule or subordinate legislation.

Lease means the lease of the Premises set out in Annexure A to be entered into and completed as set out in this deed.

Market Land means the land shown on the plan attached as Annexure B.

Nominated Handover Date means the date nominated by the Landlord under clause 2.3(a) (as may be extended under clause 2.4).

Practical Completion means that stage of the Landlord's Works when the Landlord's Works are practically complete, except for minor works, finishes or defects that do not prevent the Tenant from accessing the Premises as contemplated by this deed and the Lease.

Premises means that part of the Trading Floor Complex set out in Item 2.

Requirement means any requirement, notice, order or direction received from, or given by, any Authority.

Security Amount means an amount equal to the estimated Commencing Rent for the first 3 months of the initial term of the Lease plus GST.

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).

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) 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.

Tenancy Coordinator means the representative of the Landlord who has been appointed by the Landlord to assist with the coordination of the Tenant Works.

Tenancy Fit Out Guide means the Landlord's document setting out the Landlord's requirements for carrying out the Tenant Works as amended from time to time, a copy current as at the date of this deed is attached as Annexure C.

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.

Tenant Works means the works that the Tenant must carry out to fit out, and make ready for use, the Premises to the Tenant's occupational requirements.

Tenant Works Plans means the detailed drawings, plans, specifications and schedules for the Tenant Works prepared by the Tenant and approved by the Landlord.

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 Areas situated on the Market Land owned, occupied or controlled by the Landlord; and
- (b) any additions and alterations to the Trading Floor Complex.

1.2 Interpretation

In this deed, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule, information table or annexure is to a clause or paragraph of, or schedule or information table or annexure to, this deed, and a reference to this deed includes any schedule or annexure;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency;
- (f) a reference to time is to the time in Victoria;
- (g) a reference to a party includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (i) a reference to a statute, ordinance, code or other Law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (j) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
- (k) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (l) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (m) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this deed or any part of it; and
- (n) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

1.3 Headings

Headings are for ease of reference only and do not affect interpretation.

1.4 Governing law and jurisdiction

This deed is governed by the law of Victoria and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria and all courts of appeal from those courts.

1.5 Definitions in the Lease

Capitalised expressions which are not defined in this deed but which have a defined meaning in the Lease have the same meaning in this deed as in the Lease.

1.6 Definitions in the Tenancy Fit Out Guide

Capitalised expressions which are not defined in this deed but which have a defined meaning in the Tenancy Fit Out Guide have the same meaning in this deed as in the Tenancy Fit Out Guide.

2. Landlord's Works

2.1 Landlord's obligation

Subject to the Landlord obtaining all Approvals for the Landlord's Works, the Landlord must undertake and complete the Landlord's Works in accordance with this deed.

2.2 Delivery of Premises

The Landlord must:

- (a) procure that the Landlord's Works are undertaken:
 - (i) at the Landlord's cost;
 - (ii) in a proper and workmanlike manner; and
 - (iii) in accordance with:
 - (A) all Laws and Requirements; and
 - (B) all relevant Approvals; and
- (b) use reasonable endeavours to procure Practical Completion by the Date for Practical Completion.

2.3 Landlord to notify of the Handover Date and the Commencement Date

Subject to the Tenant complying with its obligations in this deed and the Tenancy Fit Out Guide, the Landlord must provide the Tenant with not less than 60 days' prior written notice of:

- (a) the date on which the Landlord considers that the Landlord's Works are or will be sufficiently advanced for the Tenant to be given access to the Premises to carry out the Tenant Works; and
- (b) the anticipated Commencement Date.

2.4 Date extended

The Landlord may, in its absolute discretion, extend the Date for Practical Completion, the Nominated Handover Date, the Common Opening Date and the Commencement Date by a reasonable period including for:

- (a) bad weather;

- (b) loss, damage or interference by fire, explosion, flood, earthquake, lightning, storm, tempest, riot, civil commotion, theft, vandalism or malicious damage;
- (c) a worker dispute, strike, lock out or similar event which affects:
 - (i) the supply of labour, goods, equipment or materials; or
 - (ii) a person or service involved in carrying out the Landlord's Works;
- (d) delay by an Authority in giving a permit, consent or Approval;
- (e) delay caused by the Tenant, the Tenant's contractors or the Tenant Works;
- (f) breach of this deed by the Tenant; or
- (g) proceedings being taken or threatened by, or disputes with, any person.

2.5 Variations to Landlord's Works

The Landlord may make changes to the Landlord's Works if:

- (a) they are required by an Authority; or
- (b) the Landlord wants to make the changes or considers them necessary, provided that where the changes in the Landlord's reasonable opinion have a material adverse effect on:
 - (i) the Tenant's ability to use the Premises for the use permitted under the Lease or to carry out the Tenant Works in accordance with this deed; or
 - (ii) the Services to be provided to the Premises,
 the Landlord first obtains the Tenant's consent (which consent must not be unreasonably withheld or delayed).

2.6 Certificate of Practical Completion

- (a) When the Landlord believes that the Landlord's Works have reached Practical Completion it must request the Landlord's Consultant to inspect the Landlord's Works and to issue a Certificate of Practical Completion.
- (b) The Landlord's Works are taken to have reached Practical Completion on the date stated in the Certificate of Practical Completion.
- (c) The Landlord must give the Tenant a copy of the Certificate of Practical Completion as soon as possible.

2.7 Tenant's acknowledgment

The Tenant acknowledges that:

- (a) on the date on which Practical Completion is achieved, the Landlord may not have completed all of the Construction Works and/or the Category B Works; and
- (b) the Construction Works and/or the Category B Works may:
 - (i) be carried out after the Commencement Date; and
 - (ii) cause inconvenience and disruption to the Tenant and to the Tenant's business,

and the Tenant must do all things necessary to facilitate the correct sequencing of the Construction Works, the Category B Works and the Tenant Works.

2.8 Tenant will not object

The Tenant may not make any Claim in respect of:

- (a) the condition of the Premises as at the Handover Date;
- (b) inconvenience or disruption that the Construction Works and/or the Category B Works cause to the Tenant, or the Tenant's business, whether before or after the Commencement Date;
- (c) any delay in the Date of Practical Completion, the Nominated Handover Date or the Commencement Date;
- (d) changes to the Landlord's Works;
- (e) interruption to or failure in the supply of a service to the Premises or the Trading Floor Complex; or
- (f) malfunction or breakdown of any machinery, equipment or service that supplies or is connected to the Premises.

3. Tenant Works Plans

3.1 Tenant Works Plans must comply with requirements

The Tenant Works Plans must comply with:

- (a) all Approvals relating to the Tenant Works;
- (b) all Laws and Requirements;
- (c) the Tenancy Fit Out Guide;
- (d) this deed; and
- (e) the Landlord's reasonable requirements.

3.2 Submission of Tenant Works Plans

The Tenant must submit Tenant Works Plans to the Tenancy Coordinator for the Landlord's approval in accordance with the process set out in the Tenancy Fit Out Guide.

3.3 Landlord's response

- (a) The Landlord must procure that the Tenancy Coordinator consider the Tenant Works Plans promptly and notify the Tenant within the time specified in the Tenancy Fit Out Guide (if any) whether it approves the Tenant Works Plans, does not approve the Tenant Works Plans or requires the Tenant Works Plans to be amended. If the Landlord fails to do so, the Landlord will be taken to have refused the Tenant Works Plans.
- (b) The Landlord and the Tenancy Coordinator must act reasonably in considering and approving the Tenant Works Plans except in matters which affect:
 - (i) the services or the structure of the Premises, Trading Floor Complex or any other structure on the Market Land; or
 - (ii) the storefront of the Premises.
- (c) The Landlord may:
 - (i) approve the Tenant Works Plans and notify the Tenant of any reasonable conditions to the approval; or

- (ii) require the Tenant to amend the Tenant Works Plans so that they comply with clause 3.1.

3.4 Amendment of the Tenant Works Plans

If the Landlord or the Tenancy Coordinator does not approve any aspect of the Tenant Works Plans submitted under clause 3.2:

- (a) the Tenancy Coordinator must give notice to the Tenant giving the Tenant basic reasons why the Tenant Works Plans are not approved and specifying a reasonable timetable for the resubmission of amended Tenant Works Plans; and
- (b) the Tenant must make appropriate amendments to the Tenant Works Plans or prepare new Tenant Works Plans within the timetable specified by the Tenancy Coordinator and re-submit them under clause 3.2.

3.5 Obtaining Approvals

- (a) After obtaining the Landlord's approval for the Tenant Works Plans in accordance with the Tenancy Fit Out Guide and before commencing the Tenant Works, the Tenant must at its Cost obtain all Approvals for the Tenant Works.
- (b) If an Authority requires any changes to the Tenant Works Plans the Tenant must at its Cost re-submit the amended Tenant Works Plans for the Landlord's approval under clause 3.2.

3.6 Responsibilities

The Tenant is solely responsible for:

- (a) the design and specifications of the Tenant Works Plans, any defects in the Tenant Works Plans and any Costs due to any defects in them; and
 - (b) ensuring that it obtains the Landlord's approval and all Approvals for its Tenant Works Plans as soon as possible after the date of this deed,
- and
- (c) releases the Landlord and the Tenancy Coordinator from any liability to the Tenant arising out of any error, defect or inadequacy in the Tenant Works Plans or the Tenant Works; and
 - (d) indemnifies the Landlord and the Tenancy Coordinator against any Cost, expense or liability the Landlord or the Tenancy Coordinator incurs to any person (including the Tenant) in connection with any approval to or amendment of the Tenant Works Plans.

4. Tenant Works

4.1 Before commencing Tenant Works

Before commencing the Tenant Works, the Tenant must:

- (a) obtain the Landlord's or the Tenancy Coordinator's approval of:
 - (i) the Tenant Works Plans; and
 - (ii) any contractor that will carry out any part of the Tenant Works in accordance with the Tenancy Fit Out Guide;

- (b) comply with all of the requirements set out in the Tenancy Fit Out Guide which must be complied with prior to the commencement of the Tenant Works (including obtaining a Building Permit for the Tenant Works);
- (c) obtain all Approvals and provide them to the Tenancy Coordinator for inspection;
- (d) give to the Landlord:
 - (i) the items referred to in clause 8.2 and the Security Amount as required under clause 9.1; and
 - (ii) evidence that the Tenant has effected the insurances required by clause 4.8; and
- (e) construct, at its own Cost, Hoardings within or around the Premises of the type and in the locations required by the Landlord and subject to the Landlord's prior written approval.

4.2 Access

Subject to the Tenant complying with its obligations under this deed and the Tenancy Fit Out Guide, the Landlord may (in its absolute discretion) allow the Tenant access to the Premises:

- (a) to obtain measurements and other information needed to prepare the Tenant Works Plans; and
- (b) on the Nominated Handover Date (as varied under clause 2.4) to undertake the Tenant Works.

4.3 Right of access only

The Tenant acknowledges that if it is permitted to access the Premises before the Commencement Date under clause 4.2, it:

- (a) only has a non-exclusive right of access to the Premises, which the Landlord may suspend, revoke or restrict at any time:
 - (i) if the Tenant does not comply with its obligations under this deed;
 - (ii) if it is necessary or expedient to do so to allow the Landlord to complete the Construction Works; or
 - (iii) if required to ensure compliance with any Law, approval or Requirement of an Authority;
- (b) has no interest in the Market Land during the access period; and
- (c) enters into the Premises:
 - (i) as licensee only;
 - (ii) at the Tenant's own risk;
 - (iii) on the terms set out in this deed; and
 - (iv) on the condition that the Tenant:
 - (A) complies with all directions and requirements of the Landlord and the Landlord's Consultant and the Tenancy Fit Out Guide; and
 - (B) does not hinder or interfere with the Construction Works.

The Landlord must act reasonably in considering any request made by the Tenant for an extension to the Commencement Date where the Landlord suspends, revokes or restricts the Tenant's right of access to the Premises pursuant to clause 4.3(a)(ii) or clause 4.3(a)(iii).

4.4 Carrying out the Tenant Works

The Tenant must:

- (a) procure that the Tenant Works are undertaken:
 - (i) at the Tenant's Cost;
 - (ii) in a proper and workmanlike manner using good quality materials;
 - (iii) diligently and with reasonable speed;
 - (iv) in accordance with:
 - (A) all Approvals relating to the Tenant Works and the Landlord's Works;
 - (B) all Laws and Requirements (including relevant building standards of the Building Code of Australia);
 - (C) the Tenant Works Plans approved by the Landlord or the Landlord's Consultant;
 - (D) the Tenancy Fit Out Guide;
 - (E) this deed; and
 - (F) the Landlord's and the Tenancy Coordinator's requirements;
 - (v) by contractors:
 - (A) approved by the Landlord;
 - (B) who are suitably qualified, competent and experienced in carrying out works in the nature of the Tenant Works;
 - (C) who comply with any experience or competency criteria specified by the Landlord (acting reasonably); and
 - (D) have a current public liability insurance for at least \$20 million (or such other amount as the Landlord reasonably considers necessary from time to time); and
 - (vi) without interfering with the Construction Works or the provision of services by third parties;
- (b) not change any of the Tenant Works without first obtaining the Landlord's approval under clause 3;
- (c) begin the Tenant Works on or about the Nominated Handover Date (as varied under clause 2.4) and complete the Tenant Works on or before the Commencement Date or such other date agreed by the Landlord in writing;
- (d) ensure that the Tenant Works are carried out in a manner that will not affect, disrupt or cause nuisance to:
 - (i) the Landlord's Works;
 - (ii) the normal operation of the Market Land; or

- (iii) any other occupant or user of the Market Land;
- (e) complete the Tenant Works during the hours and on conditions the Tenancy Coordinator nominates (acting reasonably);
- (f) complete the Tenant Works according to all directions and requirements (including in relation to accessing the Market Land) of, and to the satisfaction of, the Landlord and the Tenancy Coordinator (acting reasonably) and in accordance with the By-Laws;
- (g) ensure any defects in the Tenant Works are promptly rectified in accordance with:
 - (i) the Tenancy Fit Out Guide; and
 - (ii) any other requirements of the Landlord or the Landlord's Consultant; and
- (h) not bring any heavy items of machinery into the Market Land likely to damage the Market Land without the prior approval of the Landlord or the Landlord's Consultant,

and must ensure that the Tenant's Agents comply with the requirements set out in this clause 4.4.

In conducting and completing the Tenant Works, the Tenant must not use or do anything which may, or which the Landlord (acting reasonably) believes may, be detrimental to the quality of air inside the Trading Floor Complex or to the health and comfort of the people in the Trading Floor Complex.

4.5 Environmental Management Plan

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.

4.6 Tenant not to affect warranties

The Tenant must not do or permit anything to be done (including the Tenant Works) to cancel or affect any warranty that applies to the Landlord's Works of which the Tenant is aware or ought reasonably be aware and indemnifies the Landlord for all liability resulting from the warranties being cancelled or affected.

4.7 Category B Works

If the Tenant Works require any Category B Works, the Landlord (or a contractor approved by the Landlord) will, subject to the Tenant paying the Landlord for the Category B Works in accordance with the Tenancy Fit Out Guide carry out the Category B Works in accordance with the Tenancy Fit Out Guide.

4.8 Insurances

The Tenant must at its own Cost, effect and keep current or ensure that the Tenant's contractors engaged on the Tenant Works effect and keep current, while the Tenant Works are being carried out the insurances required in the Tenancy Fit Out Guide which:

- (a) note the interests of the Landlord, the State, any other person nominated by the Landlord, the Tenant and the Tenant's contractors for their respective rights, interests and liabilities; and
- (b) are on terms, and with insurers, acceptable to the Landlord.

4.9 Responsibility for Tenant Works

The Tenant acknowledges that the Landlord is not liable for:

- (a) the way the Tenant Works are carried out;
 - (b) the design or specifications for the Tenant Works or any approval or amendment to them;
 - (c) defects or faults in the Tenant Works; or
 - (d) the administration of contracts with the Tenant's contractors,
- or any Costs arising due to these matters.

4.10 Completion of the Tenant Works

When the Tenant Works are, in the Tenant's opinion, completed in accordance with the terms of this deed and the Tenancy Fit Out Guide, the Tenant must:

- (a) notify the Landlord, and at the same time, give the Landlord:
 - (i) two sets of 'as built' drawings of the Tenant Works; and
 - (ii) any certificate required to be issued to permit the Tenant to lawfully occupy the Premises (other than a certificate relating to the Landlord's Works);
- (b) arrange for the Landlord's Consultant to undertake an inspection of the Tenant Works to verify whether or not the Tenant Works have been completed in accordance with this deed and the Tenancy Fit Out Guide; and
- (c) obtain a Certificate of Occupancy from the Building Surveyor.

4.11 Works, finishes and defects

If, in the reasonable opinion of the Landlord, the Tenant Works have not been completed in accordance with this deed and the Tenancy Fit Out Guide, the Landlord may provide the Tenant with a list of those works, finishes or defects requiring completion or rectification in order to comply. The Tenant must carry out those works as soon as possible and give the Landlord a fresh notice under clause 4.10(a).

4.12 Ownership of Tenant Works

On completion, the Tenant Works will be the Tenant's Fixtures.

4.13 Tenant to pay

The Tenant must pay promptly to the Landlord the Landlord's Costs in connection with the Tenant Works including Costs for:

- (a) any Category B Works carried out by or on behalf of the Landlord for the Tenant; and
- (b) Services consumed in, or provided to the Premises, including gas, electricity, water and telephone in relation to the Tenant carrying out the Tenant Works.

4.14 Access by others

The Landlord and the Tenancy Coordinator may at any time prior to the Commencement Date enter into the Premises to inspect the Tenant Works, to complete the Construction Works and/or the Category B Works or for any other reason the Landlord requires (without first being required to give notice to the Tenant).

4.15 Decision of Landlord and Tenancy Coordinator

- (a) The Tenant must not dispute a decision or non-approval by the Landlord or the Tenancy Coordinator in relation to or arising from the Tenant Works Plans or the Tenant Works.

- (b) A certificate from the Tenancy Coordinator or the Landlord is conclusive evidence of the subject matter of the certificate except in the case of manifest error.
- (c) Without prejudice to the Landlord's rights under clause 4.15(a), the Landlord and the Tenancy Coordinator must have regard to any reasonable written representations made by the Tenant in relation to the subject matter of a decision or non-approval by the Landlord or the Tenancy Coordinator in relation to or arising from the Tenant Works Plans or the Tenant Works.

4.16 Landlord's rights

If the Landlord decides that any of the Tenant Works have been carried out in breach of this deed:

- (a) the Landlord may deliver a notice to the Tenant requiring that the Tenant Works, or a part of it, be rectified, removed or demolished, and rebuilt or replaced and stating the timeframe in which the matter must be resolved; and
- (b) the Tenant must comply with the notice.

This clause 4.16 does not limit the Landlord's rights if the Tenant breaches this deed.

4.17 Tenant's failure to complete

- (a) If the Tenant does not complete the Tenant Works in accordance with the Tenant Works Plans, the Landlord may by giving notice to the Tenant:
 - (i) require the Tenant to complete the Tenant Works (including all defects reasonably notified by the Landlord's Consultant or Landlord) precisely in accordance with the Tenant Works Plans by the date specified in the notice; or
 - (ii) require the Tenant to cease the Tenant Works, in which case the Landlord may complete the Tenant Works at the Tenant's Cost; or
 - (iii) terminate this deed under clause 10.1.
- (b) If the completion of the Tenant Works has not occurred by the date which is 6 months after:
 - (i) the Commencement Date; or
 - (ii) such other date agreed by the Landlord under clause 4.4(c),
 the Landlord may terminate this deed under clause 10.1 at any time prior to completion of the Tenant Works occurring.

5. Principal Contractor

5.1 Defined terms

In this clause 5:

- (a) **OHS Act** means the *Occupational Health and Safety Act 2004* (Vic);
- (b) **OHS Regulation** means the *Occupational Health and Safety Regulations 2007* (Vic); and
- (c) **Principal Contractor** has the same meaning as that contained in the OHS Act and the OHS Regulation.

5.2 Tenant's appointment

The Landlord:

- (a) appoints the Tenant and the Tenant accepts its appointment as Principal Contractor for the Tenant Works; and
- (b) authorises the Tenant to exercise such authority of the Landlord as is necessary to enable the Tenant to discharge its responsibilities as Principal Contractor.

5.3 Tenant's obligations

The Tenant agrees that, as Principal Contractor, the Tenant:

- (a) is responsible for control of the whole of the Premises (including the Tenant Works) at all times for the purposes of the OHS Act;
- (b) must ensure that in carrying out the Tenant Works it complies with all requirements of the OHS Regulation and the OHS Act; and
- (c) is responsible for all Costs associated with performing the role of Principal Contractor.

6. Indemnities and releases

6.1 Tenant's 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 any of the following:

- (a) damage, loss, injury or death caused or contributed to by the act, negligence or default of the Tenant or of the Tenant's Agents;
- (b) the Landlord doing anything which the Tenant must do under this deed but has not done or which the Landlord considers the Tenant has not done properly;
- (c) any breach or alleged breach of any environmental or occupational health and safety Laws by the Tenant;
- (d) any breach by the Tenant of this deed;
- (e) any accident on or about the Premises, not caused by the Landlord, the Landlord's Agents or other tenants of the Trading Floor Complex;
- (f) the Tenant Works;
- (g) the occupation or use of the Premises or the Market Land or any part thereof by the Tenant or any person claiming through or acting under the authority or direction of the Tenant;
- (h) all Costs of rectifying any damage caused to the Market Land by the Tenant or directly or indirectly resulting from the Tenant Works;
- (i) any delay in the completion of the Construction Works or other works being undertaken in the Market Land, caused by the Tenant Works or otherwise by the Tenant or the Tenant's Agents; and
- (j) any breach of a warranty specified in clause 14.

It is not necessary for the Landlord or the Landlord's Agents to incur expense or make a payment before enforcing this indemnity.

6.2 Tenant's 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 any damage to or loss of any

property or injury to or the death of any person occurring on the Market Land except to the extent that they are caused or contributed to by:

- (a) the negligent act or omission of the Landlord or the Landlord's Agents; or
- (b) the default of the Landlord under this deed caused by the Landlord or the Landlord's Agents.

6.3 No liability for delay or extension of time

The Landlord is not liable for Claims directly or indirectly arising or incurred in connection with the Landlord's Works (including in relation to any delay which results in the Landlord's Works not reaching Practical Completion on or before the Date for Practical Completion).

6.4 Tenant's risk

The Tenant's use of the Premises, its entry onto the Market Land and the Tenant Works are at the Tenant's risk.

7. Possession by Tenant

7.1 Requirements before Tenant takes possession under the Lease

Without limiting the Tenant's obligations under the Lease to pay Rent from the Commencement Date, the Tenant will not be entitled to take possession of the Premises under the Lease until the Landlord gives the Tenant notice that all of the following conditions have been fulfilled, complied with or waived by the Landlord:

- (a) the Tenant has given the Landlord an amount equal to the estimated Commencing Rent (as notified by the Landlord) for the first 3 months of the Lease (plus GST) in the form of a bank guarantee or insurance bond (as security for the Tenant's obligations under the Lease);
- (b) the Landlord is satisfied that the Tenant Works have been completed in accordance with this deed and the Tenancy Fit Out Guide;
- (c) the Tenant has obtained a Certificate of Occupancy as required under the Tenancy Fit Out Guide;
- (d) Practical Completion has been achieved;
- (e) the Construction Works have been substantially completed to the Landlord's satisfaction; and
- (f) the Tenant has:
 - (i) complied with the requirements set out in the 'Authority to Trade' checklist set out in the Tenancy Fit Out Guide; and
 - (ii) obtained an Authority to Trade Certification; and
- (g) the Tenant has complied with those of its obligations under the Lease that must be complied with by the Commencement Date, including those regarding security and insurance.

This clause 7.1 applies even if the Lease has commenced.

7.2 Conducting business

The Tenant must commence to conduct business from the Premises on, and not before, the Commencement Date.

7.3 Base Rent reduction

(a) If:

(i) the Tenant properly executed this deed on or before 5pm on 31 May 2013;

(ii) the Landlord holds properly executed agreements for lease for at least 50% of the net lettable area of the stores within the Trading Floor Complex as determined by the Landlord (acting reasonably) on or before 5pm on 31 May 2013; and

(iii) the Tenant has fully complied with each of the Tenant's obligations under clause 7.1 on or before the Commencement Date,

then on the Commencement Date the Landlord agrees that the Base Rent set out in Item 3 of this deed will:

(iv) if clause 18.2(c) does not apply, be reduced to '[82% of the figure set out in Item 3]'; and

(v) if clause 18.2(c) applies, be amended as follows:

'An amount equal to the aggregate of:

(a) \$[82% of the figure set out in Item 3] per annum; and

(b) the Landlord's Fitout Works Rent.'

(b) The Tenant agrees that the Landlord grants to the Tenant the Base Rent concession in clause 7.3(a) in consideration, amongst other things, of the Tenant agreeing to comply with the terms of this deed. If the Tenant defaults under this deed at any time during the period before the Commencement Date this clause 7.3 will, at the option of the Landlord, cease to apply.

8. Grant of Lease

8.1 Grant

(a) Subject to this deed and the Tenant complying with the terms of this deed, the Landlord agrees to grant, and the Tenant agrees to accept the grant of, the Lease on and from the Commencement Date.

(b) The Lease will commence even if the Tenant Works are not completed by the Commencement Date.

8.2 Delivery of documents and monies

The Tenant must deliver to the Landlord with this deed:

(a) the Lease, in duplicate, correctly executed by the Tenant;

(b) satisfactory evidence of the insurance policies required under this deed;

(c) the Deposit Payment; and

(d) cheques for the applicable amount of duty for this deed and the Lease (if any).

8.3 Escrow

The Landlord must hold the Lease in escrow until the Commencement Date is determined under this deed.

8.4 Completion of Lease

- (a) The Landlord is authorised to complete the Lease, and must do so as soon as possible after the Commencement Date, by inserting:
- (i) the Commencement Date;
 - (ii) the Termination Date;
 - (iii) the initial Commencing Rent;
 - (iv) the commencement date and termination date of any option lease; and
 - (v) any other information necessary to complete the Lease.
- (b) The Tenant acknowledges that:
- (i) the ~~Base Commencing Rent~~ as increased ~~calculated~~ in accordance with Item 4 of this deed reflects the maximum rent which will be payable by the Tenant under the Lease from the Commencement Date for the first year of the Term;
 - (ii) the items set out in Schedule 1 of the Lease reflect those items which the Landlord anticipates will be installed for or on behalf of the Landlord in the Premises; and
 - (iii) following completion of the Landlord's Works, the Landlord may, in its absolute discretion:
 - (A) reduce the Commencing Rent payable under the Lease from the Base Rent as increased ~~amount calculated~~ in accordance with Item 4 of this deed; and
 - (B) amend the list of items in Schedule 1 of the Lease to reflect those items which have been installed for or on behalf of the Landlord in the Premises.

8.5 Parties bound

The parties are bound by the Lease from and including the Commencement Date, even though a party may not have executed the Lease, or the Lease may not have been completed in accordance with clause 8.4.

8.6 Caveats

The Tenant must not lodge a caveat on the title to the Market Land or allow a caveat lodged by a person claiming through the Tenant to be lodged or to remain on title.

9. Security Amount

9.1 Tenant must provide Security Amount

The Tenant must give the Landlord the Security Amount by way of Bank Guarantee or Insurance Bond on or before the date that the Tenant wishes to access the Premises for the Tenant Works. The Tenant will not be entitled to access the Premises for the Tenant Works until it has given the Security Amount to the Landlord. The Security Amount is security for the Tenant's performance of its obligations under this deed.

9.2 When Landlord may call on Security Amount

If the Tenant does not comply with any of its obligations under this deed, then the Landlord may draw on the Bank Guarantee or Insurance Bond without notice to the Tenant.

9.3 Reinstatement of Security Amount

If the Landlord draws on the Bank Guarantee or Insurance Bond, then no later than 14 days after the Landlord gives the Tenant a notice asking for it, the Tenant must deliver to the Landlord a replacement Bank Guarantee or Insurance Bond (as applicable) for the Security Amount.

9.4 Replacement Insurance Bank Guarantee and Bond

- (a) If at any time the Landlord reasonably considers that:
- (i) the Bank Guarantee or Insurance Bond may be unenforceable; or
 - (ii) 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 14 days of receipt of the Landlord's notice.
- (b) Any replacement Bank Guarantee or Insurance Bond must be from an entity which is acceptable to the Landlord.
- (c) The Landlord must act reasonably in its requirements under this clause.

9.5 Change in ownership

If the Landlord assigns or disposes of its interest in this deed, 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.

10. Termination

10.1 Termination for Tenant's default

Without limiting the Landlord's rights under clauses 4.17 or 11.4, the Tenant is in default and the Landlord may terminate this deed if:

- (a) the Tenant has failed to pay any money payable under this deed 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 seven days after the notice is given;
- (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 deed, 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 any notice given by the Landlord under this clause 10.1.

10.2 Consequences of termination

If this deed is terminated under clause 4.17, 10.1 or 11.4, the Tenant must:

- (a) if the Tenant has had access to the Premises and unless instructed otherwise by the Landlord:
 - (i) vacate the Premises and remove from the Premises any property belonging to the Tenant or the Tenant's Agents;
 - (ii) repair any damage to the Premises caused by the Tenant and the Tenant's Agents, or the removal of any of their property; and
 - (iii) reinstate the Premises to the condition they were in when the Tenant or any of the Tenant's Agents obtained access to them; and
- (b) repair any damage to the Market Land caused by the Tenant and the Tenant's Agents, and the Tenant's entitlement to the Lease is terminated and the Lease is of no effect even if it has been executed by either party.

10.3 Recovery of money

If this deed is terminated under clause 4.17, 10.1 or 11.4 and without limiting its other rights under this deed, the Landlord may in its discretion:

- (a) at any time treat the event giving rise to that termination as a repudiation of this deed by the Tenant; and
- (b) recover from the Tenant:
 - (i) all arrears of money payable by the Tenant and any interest on that money calculated in each case to that date of termination;
 - (ii) all Costs (including the Landlord's reasonable administration costs) incurred by the Landlord in rectifying any breaches by the Tenant of this deed; and
 - (iii) all Costs incurred by the Landlord in recovering any money or enforcing any security.

11. Assignment

11.1 Assignment by Tenant

The Tenant must not assign, transfer, mortgage or otherwise deal with any of its rights, duties or liabilities under the provisions of this deed 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).

Assignment

- (a) The Landlord will not unreasonably withhold its consent to the Tenant assigning this deed if the following conditions are satisfied:
 - (i) at the time the Tenant notifies the Landlord in writing of its wish to assign this deed, the Tenant has remedied any breach of this deed, 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 deed;
- (v) the Tenant provides the Landlord with all other information requested by the Landlord in relation to the proposed new tenant;
- (vi) 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 deed and the Lease; and
 - (B) provides any bank guarantee and/or guarantee and indemnity required by the Landlord; and
- (vii) 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 deed under this clause 11, the Tenant will remain liable under this deed and will not be released from its obligations whether in respect of past, present or future breaches of the Tenant's obligations under this deed.

11.3 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 deed which requires the Landlord's prior written consent in accordance with clauses 11.1 and 0; and
- (d) the person or group of persons acquiring control is treated as the proposed new tenant.

11.4 Landlord's Rights on Deemed Assignments

The Landlord may, within 30 days of becoming aware of any of the events listed in clause 11.3 occurring (**Deemed Assignment**) to which the Landlord has not consented, either:

- (a) consent to the Deemed Assignment in accordance with the provisions of clauses 11.1 and 0; or
- (b) terminate this deed by giving written notice to the Tenant.

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 deed.

11.5 Assignment by Landlord

The Landlord may assign or novate its interest under this deed, the Lease and the Head-Lease and deal with the Market Land and the Premises at any time in its absolute discretion and is released from its obligations in its absolute discretion under this deed on the date of the assignment or novation.

12. GST

12.1 Interpretation

In this clause 12, a word or expression defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the meaning given to it in that Act.

12.2 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.

12.3 GST gross up

If a party makes a supply under or in connection with this deed in respect of which GST is payable, the consideration for the supply but for the application of this clause 12.2 (**GST exclusive consideration**) is increased by an amount equal to the GST exclusive consideration multiplied by the rate of GST prevailing at the time the supply is made.

12.4 Reimbursements

If a party must reimburse or indemnify another party for a loss, Cost or expense, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other party is entitled to for the loss, Cost or expense, and then increased in accordance with clause 12.2.

12.5 Tax invoice

A party need not make a payment for a taxable supply made under or in connection with this deed until it receives a tax invoice for the supply to which the payment relates.

13. Notices

13.1 Service of notices

A notice, demand, consent, approval or communication under this deed (**Notice**) must be:

- (a) in writing, in English and signed by an authorised person; and
- (b) hand-delivered or sent by prepaid post or facsimile to the recipient's address or facsimile number for Notices specified in the notice details of the Information table, as varied by any Notice given by the recipient to the sender.

13.2 Effective on receipt

A Notice given in accordance with clause 13.1 takes effect when received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;

- (b) if sent by prepaid post, on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia);
- (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless the recipient immediately informs the sender that it has not received the entire Notice; 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,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

14. No representation or inducement

The Tenant warrants to the Landlord that the Tenant has:

- (a) not relied on any representation, warranty, promise or undertaking (other than those expressly contained in this deed) by the Landlord or any person acting or seeming to act on the Landlord's behalf or the State;
- (b) not been induced to enter into this deed by the Landlord or the State;
- (c) relied on the Tenant's own enquiries and skill and judgment in relation to:
 - (i) this deed and the Lease; and
 - (ii) deciding to enter into this deed and the Lease; and
- (d) has satisfied itself as to the suitability of the Premises for the Permitted Use and the business the Tenant proposes to conduct from the Premises,

and was made aware of the By-Laws then current when signing this deed.

15. Guarantee and indemnity

15.1 Guarantee and indemnity

In consideration of the Landlord entering into this deed with the Tenant, the Guarantor irrevocably and unconditionally:

- (a) guarantees to the Landlord that the Tenant will:
 - (i) pay the Guaranteed Money on time; and
 - (ii) comply on time with the Tenant's obligations under this deed, the Lease and in connection with the Tenant's occupation of the Premises; and
- (b) indemnifies the Landlord against all actions, liabilities, penalties, Claims, demands, loss or damage incurred or suffered directly or indirectly in connection with:
 - (i) the Tenant not paying the Guaranteed Money on time;
 - (ii) the Tenant not complying on time with the Tenant's obligations under this deed, the Lease or in connection with its occupation of the Premises; and

- (iii) the Landlord not being able to recover all of the Guaranteed Money from the Tenant or enforce all of the Tenant's obligations under this deed, the Lease or in connection with the Tenant's occupation of the Premises for any reason.

15.2 Extent of guarantee and indemnity

The guarantee and indemnity in clause 15.1:

- (a) are independent of and in addition to the Landlord's ability to access the Security Amount under clause 9;
- (b) will continue (despite termination of this deed) until the Landlord unconditionally releases the Guarantor in writing or until all of the Guarantor's obligations under clause 15.1 are satisfied; and
- (c) are not affected by anything, including but not limited to:
 - (i) the Landlord giving time or any other concession to the Tenant, the Guarantor or any other person;
 - (ii) the Landlord abandoning or transferring any right or compromising with or releasing the Tenant or any Guarantor;
 - (iii) the Landlord's acquiescence, delay or mistake;
 - (iv) any variation, surrender, termination or expiry of this deed (with or without the consent or knowledge of the Guarantor);
 - (v) any breach of this deed by the Tenant (with or without the consent or knowledge of the Guarantor);
 - (vi) the absence of any notice to the Guarantor of default by the Tenant under this deed;
 - (vii) any other circumstance or thing that, but for this clause 15.2, might determine or impair the operation of the guarantee and indemnity; or
 - (viii) the Lease not being registered or effective as a lease for the term set out in the Lease.

15.3 Waiver by Guarantor

The Guarantor waives:

- (a) any rights the Guarantor has to require the Landlord to proceed or enforce any right against the Tenant or any other person before claiming against the Guarantor under this clause 15;
- (b) any Claim, right of set-off, counterclaim or defence that might reduce or discharge the Guarantor's liability under this clause 15; and
- (c) any legal or equitable rights the Guarantor has that are inconsistent with the Guarantor's obligations under this clause 15.

15.4 Guarantor not to Claim

The Guarantor must not, without the Landlord's consent:

- (a) make a Claim or enforce a right against the Tenant or the Tenant's Property; or

- (b) prove, Claim or exercise any rights the Guarantor may have under an Insolvency Event of the Tenant.

15.5 Costs and interest

The Guarantor must pay the Landlord on demand:

- (a) the Landlord's Costs, charges and expenses (including legal costs on a full indemnity basis) in connection with anything done by the Landlord under this clause 15;
- (b) all taxes, duties, imposts and charges in connection with the guarantee and indemnity in this clause 15 or any transaction contemplated by the guarantee and indemnity; and
- (c) interest (at the Specified Rate) on any amount payable but not paid by the Guarantor under this clause 15 until payment is made.

15.6 Assignment

The Landlord may assign its rights under this clause 15 to any person to whom it assigns or disposes of its interest in this deed, the Head-Lease or the Premises. The Tenant and the Guarantor will do all things reasonably required by the Landlord to give effect to the assignment. The Landlord must pay the Tenant's reasonable costs in regard to an assignment under this clause 15.6.

15.7 Avoidance of deed

Despite any other provision in this deed or the Lease, if the rights provided for by this deed or the Lease or the obligations of the Tenant arising from this deed or the Lease are terminated or become or are rendered void or unenforceable or in any way inoperative in whole or in part, the liability of the Guarantor will remain as if the rights and obligations remained in force.

15.8 Defined terms

In this clause 15:

Guaranteed Money means all money that the Tenant is or may at any time be liable (actually, prospectively or contingently) to pay to the Landlord under or in connection with:

- (a) this deed or the Lease (including the Tenant's default); or
- (b) the Tenant's occupation of the Premises,

and includes money which the Tenant would be liable to pay but for its insolvency, bankruptcy, liquidation or winding up.

Tenant includes any successor or assign of the Tenant.

16. General

16.1 Alterations and waivers

This deed may be altered, and a provision waived, only in writing signed by each party.

16.2 Approvals and consents

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

16.3 Counterparts

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

16.4 No merger

The rights and obligations of the parties under this deed do not merge on completion of any transaction contemplated by this deed.

16.5 Inconsistencies

If there is an inconsistency between the provisions of the Lease and the provisions of this deed, the provisions of this deed prevail.

16.6 Further action

Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this deed and any transaction contemplated by it.

16.7 Severability

A term or part of a term of this deed that is illegal or unenforceable may be severed from this deed and the remaining terms or parts of the term of this deed continue in force.

16.8 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.

16.9 Relationship

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

16.10 Costs

- (a) Each party must pay their own Costs for the preparation, negotiation and execution of this deed and the Lease.
- (a) The Tenant must pay:
 - (i) the Landlord's reasonable Costs incurred in connection with an amendment to this deed or the Lease that was requested by the Tenant; and
 - (ii) the duty (including fines, penalties and interest) in connection with this deed and the Lease (if any).

16.11 Interest on overdue money

If the Tenant does not pay any amount payable by the Tenant under this deed on time, the Tenant must pay interest on that amount on demand by the Landlord from when the amount becomes due for payment until the amount is paid. Interest is calculated on daily balances at the Specified Rate.

16.12 Disclosure of information

The Tenant agrees that the Landlord may make available to the public information relating to this deed and the Lease, including in relation to the identity of the Tenant.

16.13 Entire deed

This deed and the Lease granted pursuant to this deed contain the entire deed of the parties with respect to their subject matter. They set out the only conduct relied on by the parties and supersede all earlier conduct by the parties with respect to their subject matter.

17. This deed ends if the Head-Lease ends

- (a) This deed 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 17(a) does not affect the Landlord's or the Tenant's rights relating to any breach of this deed that happens before this deed ends.
- (c) Despite anything else in this deed, if the Head-Lease ends for any reason, the Tenant must, if requested by the Landlord or the Head-Landlord, enter into a deed with the Head-Landlord in respect of the Premises on the same terms of this deed.
- (d) If there is inconsistency between this clause 17 and any other provision in this deed, this clause 17 prevails.

18. Landlord's Fitout Works

18.1 Tenant's election

- (a) As soon as reasonably practicable after the date of this deed, but in any event prior to the Nominated Handover Date, the Landlord must give to the Tenant a notice setting out:
 - (i) the additional rent per annum which would be payable by the Tenant as a result of the Landlord installing each of the Landlord's Fitout Works Items in the Premises; and
 - (ii) the date by which the Tenant must elect, by giving written notice to the Landlord, the Landlord's Fitout Works Items it wishes to have installed in the Premises.
- (b) If the Tenant fails to give the written notice required under clause 18.1(a)(ii) by the date given in the Landlord's notice, the Tenant:
 - (i) will be deemed to have elected that no Landlord's Fitout Works Items be installed in the Premises; and
 - (ii) will lose its right to have the Landlord install the Landlord's Fitout Works Items in the Premises.

18.2 Landlord's Fitout Works Items included in the Landlord's Works

If the Landlord procures the installation of those Landlord's Fitout Works Items as required by the Tenant pursuant to clause 18.1, then despite anything else in this deed:

- (a) the installation of the Landlord's Fitout Works Items will form part of the Landlord's Works;
- (b) the Landlord's Fitout Works Items will form part of the Landlord's Fixtures; and
- (c) an amount on account of the Landlord's Fitout Works Rent will be added to the calculation of the Base Rent, so that Item 3 reads as follows:

'Base Rent (clause 1.1)

Am amount equal to the aggregate of:

- (a) \$[#] per annum; and
- (b) the Landlord's Fitout Works Rent.'

19. Increased Space Contribution [*Optional Clause*]

19.1 Definitions

In this clause 19:

- (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 19.4;
- (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 2).

- (f) **Specified Dealing** means any assignment or transfer of this deed or the assignment, subletting, transfer, surrender or parting with possession, of the whole or any part of the Tenant's rights under the Lease or in relation to the Premises, or any change in control of the Tenant or its holding company of the type referred to in clause 11.3, which occurs before or within the first 9 years from the Commencement Date.

19.2 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 19.

19.3 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 11.1.
- (c) Despite anything else in this deed, any Specified Dealing is subject to and conditional upon the Tenant paying the full amount of the Increased Space Contribution.

19.4 Amount of Increased Space Contribution

The amount of the Increased Space Contribution which is payable by the Tenant under this clause 19 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.

19.5 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 deed and is not an obligation of any subsequent assignee or transferee of the Tenant.

[Note to Tenants: The above clause 19 is an optional clause. It is to be included in this deed if applicable and completed in accordance with the letters received by Tenants]

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 by [#] in the presence of

_____ ←	_____ ←
Signature of witness	[#]

Name of witness (print)	

[If the Tenant is a company]

Executed by [#] in accordance with Section 127 of the *Corporations Act 2001* in the presence of

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

[If the Guarantor is an individual]

Signed by [#] in the presence of

Signature of witness

← _____ ←
[#]

Name of witness (print)

[If the Guarantor is a company]

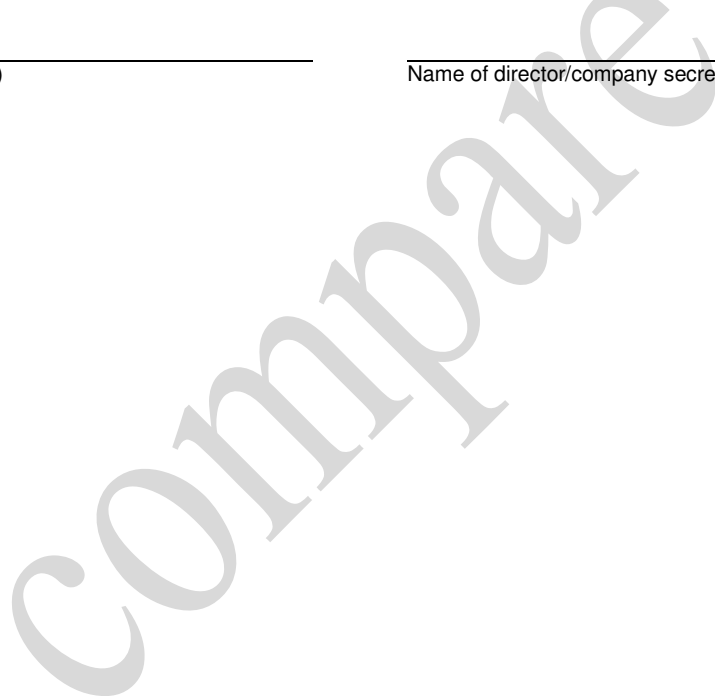
Executed by [#] in accordance with Section 127 of the *Corporations Act 2001* in the presence of

Signature of director

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

Name of director (print)

Name of director/company secretary (print)



Annexure A

Lease

Annexure to Agreement for Lease

MinterEllison

L A W Y E R S

Annexure B

Market Land

Annexure to Agreement for Lease

MinterEllison

L A W Y E R S

Annexure C

Tenancy Fit Out Guide

Annexure to Agreement for Lease

Compare

MinterEllison

LAWYERS