

Dealing Number



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1. Lessor

PHAM COMMERCIAL PROPERTY PTY LTD
ACN 600 78 792

Lodger (Name, address E-mail & phone number)
Essen Lawyers Pty Ltd
The Boardwalk
Suite 9, 1 Rialto Quay Drive
Hope Island QLD 4212
Tel: 07 5510 8012 Ref: CT:SN:14-0093
Email: admin@essenlawyers.com.au

Lodger Code

2. Lot on Plan Description

LOT 1 ON RP 44399

County
STANLEY

Parish
TOOMBUL

Title Reference
14943193

3. Lessee

Given names

Surname/Company name and number
VIET DE LITES PTY LTD ACN 128 428
955

(include tenancy if more than one)

4. Interest being leased

FEE SIMPLE

5. Description of premises being leased

WHOLE OF PREMISES

6. Term of lease

Commencement date/event: 03/12/2014
Expiry date 02/12/2017 and/or Event:
#Options: 2 X 3YEARS

7. Rental/Consideration

SEE SCHEDULE ATTACHED

#Insert nil if no option or insert option period (eg 3 years or 2 x 3 years)

8. Grant/Execution

The Lessor leases the premises described in item 5 to the Lessee for the term stated in item 6 subject to the covenants and conditions contained in:- *the attached schedule; *~~the attached schedule and document no. _____~~;
* document no. _____; *Option in registered Lease no. _____ has not been exercised.
* delete if not applicable

Witnessing officer must be aware of his/her obligations under section 162 of the Land Title Act 1994

.....signature
.....full name
.....qualification

PHAM COMMERCIAL PROPERTY PTY LTD
LTD CAN 600 780 792

5 1 11 14
Execution Date

Lessor's Signature

Witnessing Officer

(Witnessing officer must be in accordance with Schedule 1 of the Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

9. Acceptance

The Lessee accepts the lease and acknowledges the amount payable or other considerations for the lease.

.....signature
.....full name
.....qualification

VIET DE LITES PTY LTD ACN 128 428
955

5 1 11 14
Execution Date

Lessee's Signature

Witnessing Officer

(Witnessing officer must be in accordance with Schedule 1 of the Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

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This is the schedule of lease referred to in the form 7.

PART A

The parties agree that other than for completion of the summary, any alterations and additions to the lease covenants in Part B of this lease will be made by way of addition at clause 2 of Part A.

This lease is divided under the following headings:

1	Summary	10	Damage
2	Alterations and additional provisions	11	Guarantors
3	Definitions and interpretation	12	Default
4	Term and further term and holding over	13	Lessor may carry out works on the building
5	All agreements relating to money	14	Rights reserved to lessor
6	Use	15	Right of lessor to re-develop & relocate lessee within complex
7	Assignment and subletting.	16	Promotion fund
8	Maintenance repairs alterations and additions	17	Merchants association
9	Insurance and indemnity	18	General agreements

1. Summary

(a) **Term** (clause 4) THREE YEARS

(b) **Further term** (clause 4) THREE YEARS
and a further term of THREE YEARS

(c) **Rent, turnover rent, and GST** (clause 5)

- (i) \$70,000.00 per annum by instalments of \$5,834.00 plus GST calculated for the year following the commencement date.
- (ii) The first monthly payment is due on 3rd December 2014. If this is not the commencement date it is because a set up period or rent free period from the commencement date to that day has been allowed by the lessor.
- (iii) Turnover rent is not payable under this lease.
- (iv) If turnover rent is payable the percentage of turnover from which to deduct the base rent is %.
- (v) Goods and services tax is payable by the lessee in addition to the rent.

OR

(vi) ~~Goods and services tax is included in the rent.~~

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(d) **Rent reviews** (clause 5)

Rent increases	Brisbane all groups CPI	Market	Percentage
1 st anniversary	<input checked="" type="checkbox"/>	<input type="checkbox"/>	%
2 nd anniversary	<input checked="" type="checkbox"/>	<input type="checkbox"/>	%
3 rd anniversary	<input checked="" type="checkbox"/>	<input type="checkbox"/>	%
4 th anniversary	<input checked="" type="checkbox"/>	<input type="checkbox"/>	%
5 th anniversary	<input checked="" type="checkbox"/>	<input type="checkbox"/>	%
6 th anniversary	<input checked="" type="checkbox"/>	<input type="checkbox"/>	%
7 th anniversary	<input checked="" type="checkbox"/>	<input type="checkbox"/>	%
8 th anniversary	<input checked="" type="checkbox"/>	<input type="checkbox"/>	%

(e) **Outgoings** (clause 5)

(i) **Defined outgoings** are council rates, water rates, public risk insurance and ~~body corporate levies~~. Percentage payable by lessee is 100%, which is the ratio of the area of the demised premises to the total lettable area.

OR[delete (i) or (ii)]

~~(ii) **Total outgoings** as identified in the disclosure statement payable by the lessee which is % , being the ratio of the area of the demised premises to the total lettable area.~~

(iii) **Water usage, gas, electricity, telephone and other utilities** that are provided to the premises are to be paid by the lessee as they fall due.

~~(iv) Promotions fund monthly contribution [is not applicable **OR** is applicable]and is \$ _____~~

~~(v) Merchants association contribution [is not applicable **OR** is applicable]and is \$ _____~~

(f) **Bond** (clause 5)

THREE MONTHS RENT AND OUTGOINGS PLUS GST or a bank guarantee for an equivalent amount.

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(g) **Interest on overdue money** (clause 5)
12%

(h) **Use** (clause 6) CAFÉ AND TAKEAWAY

(i) **Insurance and indemnity** (clause 9)
Minimum public liability insurance . \$10,000,000

(j) **Guarantors** (clause 10)

2. **Alterations or additions to PART B**

(a)

(b) The following covenants are not intended to be included in any renewal:

(i) ; and

(ii)

PART B

Any alterations and additions to Part B should be made at clause 2 of Part A.

3. **Definitions and interpretation**

- (a) The lessor includes its executors, administrators, successors, and assigns and, for the purpose of giving any notice under this lease, the managing agent appointed by the lessor from time to time.
- (b) The lessee includes its executors, administrators, successors and assigns.
- (c) The estate means the centre, the land, the buildings and any extensions or alterations thereto of which the demised premises forms part.
- (d) Any provision of this lease to be performed by 2 or more persons shall bind those persons jointly and severally.
- (e) Any reference in this lease to any statute or regulation is deemed to include all amendments and revisions made from time to time to that statute or regulation.
- (f) Any reference in this lease to a month or monthly shall mean respectively calendar month and calendar monthly.

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(g) Reference to any authority, institute, association or body whether statutory or otherwise shall, in the event of any such authority, institution, association or body ceasing to exist or being reconstituted renamed or replaced or the powers or functions thereof being transferred to any other organisation be deemed to refer respectively to the organisation established or constituted in lieu of, or replacement for, or which serves substantially the same purpose or objects of, such authority, institute, association or body.

4. **Term and further term and holding over**

- (a) The term of this lease is, as stated in item 6 of the form 7 and **summary 1(a)**, commencing on the commencement date and expiring on the expiry date unless earlier terminated in accordance with this lease.
- (b) If the lessee desires to have a further lease of the demised premises granted to it for the further term specified in **summary 1(b)** and gives to the lessor notice in writing to that effect, not more than 6 months and not less than 3 months prior to the expiry date, or such later date applicable under section 27A of the Retail Shop Leases Act 1994, then provided at the date of the exercise of this option and at the expiry date there is no subsisting breach by the lessee of this lease, the lessor will grant to the lessee a lease of the demised premises for the further term specified in **summary 1(b)** subject to the same terms and conditions contained in this lease except this provision, unless a further option is shown in **summary 1(b)**, at a rental determined by the method specified in the table in **summary 1(d)**.
- (c) If the lessee continues to occupy the demised premises after the expiry date other than pursuant to the grant of a further lease then they do so as a monthly tenant upon such of the terms of this lease as are appropriate and such tenancy shall be determinable by either party giving to the other at any time one months notice in writing to that effect.

5. **All agreements relating to money**

(a) **Rent & rent reviews**

- (i) For the first year of the term the lessee will pay to the lessor at the lessor's direction, without demand from the lessor and without any set-off or deduction whatsoever, rent at the rate and at the times specified in **summary 1(c)**, monthly in advance on the first day of each month during the term except the first and last

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- payments which, if necessary, will be proportionate, the first being payable on the date of commencement of the term. PROVIDED ALWAYS that after the first 1 year of the term of the lease or if renewed after the first year of the renewed term the annual rental shall be increased by the method specified in the table in **summary 1(d)** provided that should at any time the consumer price index cease to be published then the lessor and lessee agree to replace the consumer price index with such other index as shall be published to replace the consumer price index and in the absence of such agreement being reached that other index shall be the index which most appropriately reflects fluctuations in the costs of living in Brisbane.
- (ii) At the commencement of any further term of the lease, in the event of the exercise of the option to renew herein contained, the annual rental shall be reviewed in accordance with the table provided in **summary 1(d)**. The current market rent is the rent that would reasonably be expected to be paid for the shop, as between a willing lessor and a willing lessee in an arm's length transaction, where the parties are each acting knowledgeably, prudently and without compulsion, determined on an effective rent basis, having regard to:
- (1) The provisions of the lease;
 - (2) The rent that would reasonably be expected to be paid for the shop if it were unoccupied and offered for renting for the same or a substantially similar use to which the shop may be put under the lease;
 - (3) The gross rent less the lessor's outgoings payable by the lessee; and
 - (4) Rent concessions and other benefits that are frequently or generally offered to prospective lessees of unoccupied retail shops.
- (iii) The current market rent is not to take into account the value of goodwill created by the lessee's occupation or the value of the lessee's fixtures and fittings on the retail shop premises.
- (iv) If the lessor and the lessee cannot agree within one month as to what the actual amount of that rent is to be, the amount of the rent is to be determined by valuation carried out by a specialist retail valuer appointed by agreement of the parties to the lease, or failing agreement, by the chief executive pursuant to the Retail Shop Leases Act 1994.

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- (v) The matters set out above are to be taken into account by a specialist retail valuer in determining the amount of the rent.
- (vi) The lessor must, not later than 14 days after being requested to do so by a specialist retail valuer, supply the valuer with information, where reasonably available to the lessor, requested in a list provided by the valuer to assist the valuer to determine the current market value including the following information about leases for comparable retail shops in the same building or retail shopping centre:
 - (1) Current rental for each lease;
 - (2) Rent free periods or any other form of incentive;
 - (3) Recent or proposed variations of any lease;
 - (4) Outgoings for each lease; and
 - (5) Including any other information prescribed by law.
- (vii) The valuation is to be in writing and to contain detailed reasons for the specialist retail valuer's determination and to specify the matters to which the valuer had regard for the purpose of making their determination.
- (viii) The parties to the lease are to pay the costs of a valuation by a specialist retail valuer in equal shares.

(b) **Turnover rent**

In the event that turnover rent is said to be payable under this lease in **summary 1(c)** then the lessor and lessee agree as follows:

(i) **Definition**

Turnover means the total amount received as the price of all goods sold, and the charge for all services performed, at or from the demised premises, less the amount of any refunds but does not include those matters excluded by the Retail Shop Leases Act 1994. Each sale or charge on a credit or instalment basis will be treated as a sale for the full price in the lease year during which the sale is first recorded, whenever payment is made.

(ii) **Amount**

In addition to base rent, the lessee must pay to the lessor by way of turnover rent the amount, if any, by which the percentage of turnover specified in **summary 1(c)** in each leaseyear exceeds the base rent for that year.

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(iii) **Payment**

- (1) Turnover rent due for the first leaseyear must be paid by the end of the first quarter in the second lease year.
- (2) On the first day of each month in the second and each subsequent lease year, the lessee must pay to the lessor on account of turnover rent an amount equal to one twelfth of the turnover rent for the previous leaseyear.
- (3) As soon as the turnover rent for the second and each subsequent lease year is calculated, an appropriate adjustment will be made between the lessor and the lessee to ensure that the lessee has paid and the lessor received the correct turnover rent for that lease year.
- (4) Even if this lease has ended, the lessee will remain liable for payment of turnover rent calculated up to the end of the lease.

(iv) **Lessee's records**

The lessee must keep proper books of account and records relating to all turnover for at least 3 years after the end of each leaseyear.

(v) **Monthly statement**

Within 10 days after the end of each month, the lessee must give the lessor a statement certified by the lessee's duly authorised responsible officer, or representative, of the lessee's turnover during that month.

(vi) **Auditor's certificate**

Within 2 months after the end of each leaseyear, the lessee must give the lessor a statement certified by the lessee's auditor who must be a registered company auditor as defined by the corporations law of the lessee's turnover during the preceding leaseyear. That certificate must contain whatever details the lessor may reasonably require.

(vii) **Lessor may examine books**

The lessor may, at any reasonable time, examine those of the lessee's books and records as are necessary to enable the turnover to be verified.

(viii) **Audit**

If the lessor gives at least 5 days notice to the lessee that it requires an independent audit, the lessee must make available for that purpose those of their books and records as will enable turnover to be verified. If that audit discloses an

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understatement of turnover by the lessee of 5% or more, the lessee must promptly pay to the lessor the amount of any deficiency in turnover rent, and also the cost of the audit.

(c) **Outgoings**

The lessee must pay to the lessor the outgoings set out in **summary 1(e)** in the amounts and at the times set out in the estimates and statements.

(i) **Estimates**

- (1) The lessor must give the lessee a written estimate of the outgoings to which the lessee contributes under the lease, in the form prescribed under the Retail Shop Leases Act 1994.
- (2) The estimate of outgoings must be given to the lessee in respect of each accounting period of the lessor during the term of the lease and must be given before the lease is entered into and thereafter during the term of the lease at least 1 month before the commencement of the accounting period concerned.
- (3) If the shop is in a retail shopping centre, the estimate of outgoings is to include:
 - A. A statement of management fees, broken down into the fees to be paid by the lessee towards the administration costs of running the centre and other fees paid to the management company;
 - B. A statement of cleaning costs to be paid by the lessee, broken down into the costs of consumables and other costs; and
 - C. Any other particulars prescribed by law.

(ii) **Outgoings statements**

- (1) The lessor must give the lessee a written statement (an outgoings statement) that details all expenditure by the lessor in each accounting period of the lessor during the term of the lease on account of outgoings to which the lessee is required to contribute.
- (2) If the shop is in a retail shopping centre, the outgoings statement must include a statement of the current gross lettable area of the shopping centre and details of any material change in that gross lettable area during the period to which the outgoings statement relates.
- (3) If the shop is in a retail shopping centre, the outgoings statement is to include:

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- A. A statement of total management fees paid in respect of the centre, broken down into the fees paid towards the administration costs of running the centre and other fees paid to the management company;
 - B. A statement of total cleaning costs paid by the lessor, broken down into the costs of consumables and other costs; and
 - C. Any other particulars prescribed by law.
- (4) The outgoings statement is to be given to the lessee within 3 months after the end of the accounting period to which it relates.

(iii) **Adjustment**

There is to be an adjustment between the lessor and the lessee for each accounting period of the lessor to take account of any under-payment or over-payment by the lessee in respect of outgoings during the period. The adjustment is to take place within one month after the lessor gives the lessee the outgoings statement for the period concerned and must in any event take place within 4 months after the end of that period.

(iv) **Other expenditure**

The lessee is to pay punctually for all water, gas, electricity, telephone, heat and other utilities that are provided to the premises.

- (1) The lessee shall pay as directed its contribution to the promotions fund as set out in **summary 1(e)**.
- (2) The lessee shall pay as directed its contribution to the merchants association as set out in **summary 1(e)**.

(d) **Bond**

The lessee shall either provide a bank guarantee for or pay to the lessor the amount specified in **summary 1(f)** as security for the due performance by the lessee of its covenants hereunder. A breach of covenant shall entitle the lessor to call upon the guarantee for or utilise such amount towards the cost of rectifying any breach otherwise the amount less any necessary expenditure shall be refunded to the lessee at the end of the lease and any guarantee released. A bank guarantee shall be in favour of the lessor, not have a termination date and shall be expressed to be security for the performance by the lessee of its obligations under the lease.

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(e) **Goods and services tax**

- (i) The lessor shall provide the lessee with a tax invoice in relation to any taxable supply made to the lessee who shall pay to the lessor the applicable goods and services tax in addition to the cost of the supply.
- (ii) Rent is exclusive of goods and services tax and it is payable in addition to the rent, unless rent is expressed to be inclusive of goods and services tax in the summary.
- (iii) The lessor must pass on the benefit of any input tax credits received by the lessor in relation to any amount payable by the lessee to the lessor.

(f) **Interest on overdue money**

In the event of any rental or other money due by the lessee under this lease remaining unpaid for a period of 14 days after their due date then the lessee shall pay to the lessor interest at the rate specified in **summary 1(g)** on that money calculated from the due date until the date of payment and the lessor will be entitled to recover that money as if the same were rent in arrears.

(g) **Costs**

The lessor may require payment by a lessee of:

- (i) A reasonable sum in respect of lease preparation expenses incurred in connection with making an amendment to a proposed lease that was requested by or on behalf of the prospective lessee;
- (ii) Registration fees and costs incurred to register the lease;
- (iii) Mortgagee's consent costs;
- (iv) Costs incurred by the lessor to obtain a survey of the premises in order that a lease plan be prepared in registrable form; and
- (v) Legal costs on a solicitor and own-client basis in relation to any breach by the lessee of the terms of this lease resulting in enforcement action taken by the lessor.

6. **Use**

- (a) The lessee shall not use the demised premises otherwise than for the purpose stated in **summary 1(h)** hereto and shall comply with all requirements of law in relation to that use. The lessor does not in any way warrant that the demised premises are or will remain suitable or adequate for such purposes.

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- (b) The lessee shall not use or permit to be used for other than their designed purposes any of the fixtures or fittings in the demised premises or the estate.
- (c) The lessee shall not store or use an inflammable or dangerous substance upon the demised premises or the estate unless a normal incident of the permitted use.
- (d) The lessee shall not do or permit to be done on the demised premises or in the estate anything which in the opinion of the lessor may become a nuisance or a disturbance, obstruction or cause of damage whether to the lessor or to other tenants or users of the estate nor to use the demised premises in any noisy, noxious or offensive manner.
- (e) The lessee shall not obstruct or interfere with any of the entrances or common areas of the estate.
- (f) The lessee shall advise the lessor, or where applicable its managing agent, of the private address and telephone number of the lessee or if the lessee is a corporation of the manager, secretary or other responsible person employed by the lessee and shall keep the lessor or its managing agent informed of any change of such address or telephone number.
- (g) The lessee shall secure the demised premises against unauthorized entry at all times when the demised premises are left unoccupied and the lessor reserves the right by its servants and agents to enter upon the premises and fasten same if the demised premises are left unsecured.

7. Assignment and subletting.

- (a) The lessee covenants not to assign, sub-let or otherwise deal with the demised premises without the prior written consent of the lessor, which consent shall not unreasonably be withheld. Such consent shall not be granted unless the lessee demonstrates to the reasonable satisfaction of the lessor that the proposed assignee or sub-lessee is of good repute, responsible of sound financial standing, experienced in the business to be conducted in the demised premises and capable of performing the obligations of the lessee under the terms of this lease and provided that there are no subsisting breaches by the lessee of the terms of this lease at the time of assignment or subletting and provided further that in the case of an assignment the lessee procures the execution by the assignee of an assignment of this lease in a form approved by the lessor and the lessee pays all costs incurred by the lessor whether the proposed assignment proceeds to

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completion or not. In the event of the proposed assignee being a company then the lessor may require guarantees of the directors and/or shareholders of such company.

- (b) In the event of the lessee being a company then any change in the shareholding of the lessee company altering the effective control of the lessee shall be deemed a proposed assignment requiring the consent of the lessor, in accordance with this provision.

8. Maintenance repairs alterations and additions.

- (a) The lessee shall keep the interior of the demised premises and all fixtures and fittings therein in a state of good repair having regard to its condition at the commencement of the lease, fair wear and tear and damage caused by fire, flood, storm, tempest excepted, unless any policy of insurance covering such occurrences shall have been vitiated or the policy money refused as a result of the act or omission of the lessee its servants, agents, licensees or invitees. Any plant or machinery located within and exclusively servicing the demised premises shall be maintained and serviced and kept in a state of good repair by the lessee at its expense and the lessee will keep current such maintenance, service and repair contracts that are reasonably required by the lessor.
- (b) The lessor, the lessor's executors, administrators and assigns, or an agent of the lessor or of the lessor's executors, administrators or assigns, may, twice in every year during the term at a reasonable time of the day upon giving to the lessee 2 days previous notice, enter upon the demised premises and view the state of repair thereof, and may serve upon the lessee or the lessee's executors, administrators or assigns' at the demised premises, a notice in writing of any defect, requiring the lessee or the lessee's executors, administrators or assigns, within a reasonable time, to repair same in accordance with any covenant expressed or implied in the lease, and that in default of the lessee's or the lessee's executors, administrators or assigns' so doing it shall be lawful for the lessor, the lessor's executors, administrators, or assigns from time to time to enter and execute the required repairs.
- (c) After each 3 years of the term hereof the lessee shall repaint and redecorate such part of the interior of the demised premises as are painted or otherwise decorated.
- (d) The lessee shall repair, replace and maintain all glass broken in the demised premises, all non-operative light fittings and shall regularly clean the demised premises and dispose of

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all waste products and shall take all necessary steps to control any pest infestation and shall keep the demised premises in a clean and tidy condition.

- (e) The lessee shall repair, replace and maintain all heating, electrical and plumbing fittings installed in the premises, broken or damaged as a result of the use of demised premises by the lessee.
- (f) The lessee shall comply with all statutory requirements affecting the demised premises and will comply with any notices or orders which may be given by any authority in respect of the use of the demised premises by the lessee PROVIDED THAT the lessee shall be under no liability in respect of any structural alterations unless that liability arises out of the lessee's particular use or occupation of the demised premises.
- (g) The lessee shall keep and maintain the waste pipes, drains and water closets servicing the demised premises in a clean, clear and operative condition and shall employ licensed tradesman to clear any blockages which may occur therein and will regularly clean and service any grease traps provided for the use of the demised premises.
- (h) In the event of the lessee failing to perform any of its obligations under the foregoing provisions then the lessor may do such things as are necessary to comply with such provisions and may recover from the lessee the costs of so doing as if the cost was unpaid rental hereunder.

9. Insurance and indemnity

- (a) The lessee shall keep current at all times during the currency of this lease:
 - (i) A policy of public risk insurance in the name of the lessee and noting the lessor's interest applicable to the demised premises and the building and the business carried on therein for an amount of not less than the amount specified in **summary 1(i)**;
 - (ii) An insurance policy against the loss or damage to the fixtures, fittings and goods of the lessee, its servants, agents, licensees or invitees; and
 - (iii) An insurance policy in the name of the lessee and noting the lessor's interest for the replacement value of all glass in or enclosing the premises.
- (b) The lessee hereby indemnifies the lessor against all claims, actions, losses and expenses for which the lessor may become liable arising out of the act or neglect of the lessee, its servants, agents, employees, licensees and invitees in the use of the demised premises.

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- (c) If the lessee does or omits to do anything whereby the premiums of any insurance effected by the lessor are increased then the lessee shall pay such increase in insurance to the lessor.

10. Damage

- (a) If during the currency of this lease the demised premises or a substantial part thereof is destroyed so substantially as to be wholly unfit for occupation by the lessee, then the rental hereby reserved shall abate and this lease and the term hereby created may, if the lessor so elects and of its election in writing notifies the lessee within 1 month of the destruction or damage, be terminated and brought to an end, PROVIDED THAT if the lessor does not give such notice and does not within a period of 3 months from such occurrence commence to restore the demised premises, the lessee may, by notice in writing to the lessor, terminate this lease.
- (b) In the event that the demised premises or any part thereof shall at any time during the continuance of the lease be damaged so as to render part of the same unfit for occupation and use by the lessee, then a proportionate part of the rent hereby reserved according to the nature and extent of the damage sustained shall abate until the demised premises shall have been rebuilt or made fit for the occupation and use of the lessee.
- (c) In the event of the occurrences referred above, the rent reserved by this lease shall not abate in the event that any policy of insurance covering such occurrences or loss of rental policy shall have been vitiated or the policy money refused in whole or in part in consequence of some act or default by the lessee or his servants, agents, licensees and invitees.

11. Guarantors

In consideration of the lessor at the request of the persons named in **summary 1(j)**, 'the guarantors' which expression shall include their executors, administrators, successors and assigns, entering into this lease with the lessee the guarantors covenant and agree with the lessor:

- (a) That they will be jointly and severally liable to the lessor for the due payments of all money under this lease and the due performance of all covenants and conditions of this lease on the part of the lessee to be performed;

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- (b) That they will remain liable to the lessor notwithstanding that:
 - (i) The lessor has exercised all or any of its rights under the lease; or
 - (ii) The lessor has not made prior demand upon the lessee; or
 - (iii) the granting of time or any other indulgence to the lessee and notwithstanding the death or insolvency of the lessee;
- (c) That they will be primarily liable as if named as the lessee herein;
- (d) That their liability will not in any way be conditional upon the validity or enforceability of the covenants and agreements herein contained against any other person and will continue until all money has been paid and all obligations have been satisfied; and
- (e) That in the event of the exercise of any option herein contained by the lessee, the guarantee will continue during the further term of the lease and this guarantee shall enure for the benefit of the lessor, its executors, administrators and assigns.

12. Default

- (a) If at any time during the term of this lease or any extension thereof the lessee shall fail to comply with the essential terms of this lease to pay any rent or other money payable by the lessee to the lessor within 14 days of the due date for payment of such money although no formal demand therefore has been made or default in the fulfillment of any covenant, condition or stipulation expressed or implied in this lease on the part of the lessee to be performed relating to essential matters such as use, assignment, subletting, repair and maintenance and such default is continued for the space of 14 days after written notice by the lessor to the lessee at its address appearing on the first page hereof to rectify such default or if repairs required by any notice to repair and not completed within the time therein specified, then in any such case the lessor may re-enter upon the demised premises or any part thereof in the name of the whole forcibly, if necessary, and thereby determine the estate of the lessee.
- (b) Within 7 days of determination of the estate of the lessee the lessee shall remove its fixtures, fittings and goods from the demised premises failing which such fixtures fittings and goods as have not been removed by the lessee shall be forfeited to the lessor and shall become the property of the lessor. The lessor shall re-let the demised premises as soon as practicable after determination of the lease at the best rent obtainable.

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- (c) The lessor may recover all arrears of rent, all loss of rental incurred as a result of the determination of the lease, all costs and expenses associated with the removal of the lessee's fixtures, fittings and goods and the restoration of the demised premises to a rentable condition, fair wear and tear and damage caused by fire, flood, storm and tempest excepted, damages for breach of any covenant contained in the lease any other money owing by the lessee to the lessor and any other expenses of the lessor resulting from the determination of the lease.
- (d) Should the lessor become entitled to re-enter and take possession of the demised premises and determine this lease, then the lessee hereby irrevocably appoints the lessor to be the attorney of the lessee for them in their name and as their act and deed from time to time if and when such attorney shall think fit for the purpose of giving full effect to the power of re-entry to execute and procure the registration of a surrender of this lease and to register this power of attorney and do any matter or thing which may be required to give full effect thereto.

13. Lessor may carry out works on the building

- (a) The lessor may carry out any works on the centre, other than the shop, that are contained in the disclosure statement or that were otherwise specifically drawn to the attention of the lessee before this lease was entered into.
- (b) The works may include:
 - (i) Demolishing and/or reconstructing any part of the centre;
 - (ii) Extending or reducing the size of the centre;
 - (iii) Renovation or refurbishment;
 - (iv) Altering the size, location, composition and arrangement of any parts of the centre;
 - (v) Altering the size, location, composition and arrangement of the common areas; and
 - (vi) Altering the means of access to the centre or to the shop.
- (c) If the lessor employs reputable contractors or tradespeople to carry out the works and if they do so during hours and using methods and practices that are not unusual for work of the kind they are doing, the lessor will not be in breach of the lease, will not be liable to the lessee for nuisance, negligence, any other tort or any other breach of the lease for carrying out the works or for anything related to doing so and will not be liable to pay compensation to the lessee.

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14. Rights reserved to lessor

The lessor may:

- (a) Use the outside of the external walls and the roof of the centre and of the shop for any purpose;
- (b) Provide additional retail opportunities through changes to common property;
- (c) Create easements or other rights;
- (d) Change services;
- (e) Affix signs;
- (f) Change decors;
- (g) Add or reduce lettable areas;
- (h) Change the tenant mix;
- (i) Show the shop to prospective lessees and put 'To Let' notices on the shop during the 3 months before the end of the lease;
- (j) Use the shop for the passage of air-conditioning equipment, fire and sprinkler systems, pipes, services, ducts, cables, electric wiring, water sewerage and drainage connections and any other services; and
- (k) Enter the premises at all reasonable times to install, maintain or repair any of those things.

15. Right of lessor to re-develop and re-locate lessee within complex.

- (a) The lessor shall be entitled at any time during the term of this lease to relocate the business conducted by the lessee upon the premises to alternative premises (new premises) within the complex provided always:
 - (i) The premises are required by the lessor for extension or for renovation refurbishment or re-development of an area of at least 1,000 square metres of space within the existing complex, either alone or in conjunction with other premises in the complex;
 - (ii) The new premises comprise an area not more than 10% greater than nor 10% less than the area of the premises; and
 - (iii) The new premises are located in a position in the complex which in the lessor's reasonable opinion is not less favourable to the business of the lessee than the location of the premises.
- (b) Upon receiving not less than 3 months prior notice in writing (surrender notice) from the lessor that the premises are required by the lessor, and in consideration of the grant of a

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new lease (new lease) of the new premises for the term then unexpired of this lease the lessee covenants with the lessor to surrender this lease in the form prescribed under the Land Title Act 1994 and to deliver such duly executed form of surrender to the lessor together with the lessee's copy of this lease.

- (c) Within one month after the surrender notice is given, the lessee may give notice to the lessor terminating this lease (termination notice), in which case this lease will end 3 months after the surrender notice was given unless the parties agree that it is to end at some other time. If the lessee does not give a termination notice, the lessee will be taken to have accepted the offer of a new lease of the alternative premises.
- (d) The covenants and conditions of the new lease shall be in the same form (mutatis mutandis) as are herein contained with the following exceptions:
 - (i) The term shall be of such period of time so as to expire on the date of termination;
 - (ii) So far as is reasonable in the opinion of the lessor the dates fixed in this lease for the review of the annual rent and other payments to be made by the lessee shall be maintained in the new lease on the deemed basis that there has been no interruption to the term of this lease; and
 - (iii) The annual rent shall be an amount to be agreed between the lessor and the lessee or in the event of disagreement an amount to be determined, subject to the proviso hereinafter contained, as the open market rental by the valuation procedures referred to herein provided always that the annual rent so determined, calculated as a rate per square metre of the new premises, shall not exceed the rate per square metre payable by the lessee in respect of the premises at the expiration of the period referred to in the surrender notice.
- (e) The lessee shall after consultation with the lessor fit-out the new premises to a standard acceptable to the lessor.
- (f) The lessor will pay or reimburse to the lessee the lessee's reasonable costs approved by the lessor after consultation with the lessee incurred in moving stock, fixtures and fittings from the premises to the new premises and will contribute towards the lessee's fit-out of the new premises such amount as the lessor deems reasonable having regard to the age of the fixtures and fittings at the time of relocation and the term of the new lease.
- (g) In respect of either the premises or the new premises, rent will abate for any period during which solely as the direct consequence of the removal and re-installation of the stock,

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fixtures and fittings, the lessee is unable to carry on business from either the premises or the new premises.

- (h) The lessee covenants with the lessor that the surrender of this lease shall take effect from the expiration of the period referred to in the surrender notice and the lessor shall thereafter without further notice be entitled to possession of the premises but without prejudice to the rights of either the lessor or the lessee for any antecedent breach of the terms of this lease, whether expressed or implied, and the lessee hereby irrevocably appoints the lessor and/or any director of the lessor for the time being severally their attorney for the purpose of executing on behalf of the lessee and as the lessee's act and deed a surrender of this lease and for the purpose of registering such surrender if this lease has been registered under the provisions of the Land Title Act 1994.
- (i) The lessee acknowledges and agrees that the lessor shall under no circumstances be under any liability for any loss, injury or damage, including without limiting the generality of the foregoing loss of profits and/or economic loss, sustained by the lessee or any other person at any time as a result of or directly or indirectly arising in any way out of the relocation, the new premises or their location and/or any matter or thing referred to in this clause AND that the exercise by the lessor of its rights conferred by this clause shall not constitute a breach of the covenant for quiet enjoyment contained in this lease.

16. Promotion fund

- (a) In the event that the lessor has established a promotion fund under the control of the lessor it will be applied for all or any of the following purposes:
 - (i) The promotion and publicising of the centre for the benefit of businesses operating therein;
 - (ii) The advertising of the centre and the conduct of promotional activities therein including entertainments, competitions and the like; and
 - (iii) The engagement in such activities as the lessor may from time to time consider conducive to the attainment of the above mentioned purposes.
- (b) AND THE LESSEE will make such contributions as the lessor may from time to time determine to any such fund such contributions to be paid monthly in advance on the same days as payment of the base rent and otherwise as and when required by the lessor PROVIDED ALWAYS that the total amount of such contribution shall not in any year

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exceed an amount equal to 6% of the minimum rent in respect of that year. The current amount payable by the lessee if any is set out in **summary 1(e)** above.

17. Merchants association

If an association for the co-operation, promotion and advertisement of the centre and the businesses conducted there from is to be established by the lessor with the consent of the majority in number of the lessees then the lessee shall become and remain a member in good standing of such association and shall at all times comply with and abide by the constitution and rules and regulations for the time being of such association and shall pay to the association all membership fees, subscriptions, contributions, levies and other money which become due and owing by the lessee to any such association. The current amount payable by the lessee, if any, is set out in **summary 1(e)** above.

18. General agreements.

(a) **Compliance with retail leases legislation**

The parties agree that they will at all times comply with the provisions of the Retail Shop Leases Act 1994 in particular the provisions relating to the resolution of disputes.

(b) **Alterations**

The lessee shall not effect any alterations or additions to the demised premises without the written consent of the lessor.

(c) **Remove fixtures**

The lessee shall upon the expiration or sooner determination of this lease remove its fixtures, fittings and goods and make good any damage to the premises or the estate caused by such removal and in the event such fixtures, fittings and goods have not been removed by the lessee within 7 days of such expiration or earlier determination then they shall be forfeited to the lessor and shall become the property of the lessor.

(d) **Hours**

The lessee shall not occupy or permit the demised premises to be occupied or used outside the hours as are from time to time stipulated by law.

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(e) **Signage**

The lessee shall not place any sign, advertisement, name or notice on any part of the demised premises or the estate without the lessor's prior written consent and if necessary without the prior consent of any relevant competent authority.

(f) **Infrastructure repair by lessor**

The lessor reserves the right to use, maintain, modify, relocate and repair any services, fixtures or fittings passing through the demised premises or the estate and in doing so will cause the minimum of inconvenience and disruption to the lessee's business.

(g) **Prospective tenants or purchasers**

The lessee will at all reasonable times permit the lessor to show the demised premises to prospective tenants or purchasers and will allow the lessor to affix such 'For Sale' or 'To Let' notices as the lessor may deem expedient.

(h) **Service of notices**

A communication required by this deed, by a party to another, must be in writing and may be given to them by being:

- (i) Delivered personally; or
- (ii) Posted to their address specified in this agreement, or as later notified by them, in which case it will be treated as having been received on the second business day after posting; or
- (iii) Faxed to the facsimile number of the party with acknowledgment of receipt received electronically by the sender, when it will be treated as received on the day of sending; or
- (iv) Sent by email to their email address, when it will be treated as received on that day.

(i) **Strata titling**

In the event of the lessor wishing to effect a strata title on the estate, then the lessor may carry out such works as are required by the responsible authorities PROVIDED THAT in so doing it will cause the minimal inconvenience and disruption to the lessee's business.

(j) **Severance**

The lessor and lessee agree that any provision of this lease which is in breach of any statute regulation by-law or ordinance and in consequence of such breach is voidable, unenforceable or invalid then it shall be severable from this lease and this lease shall be read as though such provision did not form part of the same.

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(k) **Use of common property**

The lessee shall have the right in common with other lessees of other parts of the premises of which the demised premises form part to use the common property in and about the demised premises in accordance with the regulations which may be made from time to time by the lessor for the purpose of controlling, regulating and administering the common property for the benefit of all lessees within the estate.

(l) **Quiet enjoyment**

And the lessor doth hereby covenant with the lessee that by paying the rent hereby reserved, and performing the covenants hereinbefore on their part contained, shall and may peaceably possess and enjoy the demised premises for the term hereby granted, without any interruption or disturbance from the lessor or any other person or persons lawfully claiming by, from, or under him or her.

Signed by the Guarantors:

Witness Sign

CHRISTOPHER TOOGOOD

SOLICITOR

Witness – Name (printed)

Justice of the Peace/Solicitor/Commissioner for Declarations



Guarantor Sign

KHANH KIM THI PHAM
Guarantor – Name (printed)