

contract to lease retail premises
by offer and acceptance



REIWA
REAL ESTATE INSTITUTE
OF WESTERN AUSTRALIA
CORPORATE MEMBER
FOR USE BY REIWA MEMBERS

TENANT GUIDE: See attached

NOTE: The leasing of retail premises is dealt with by the Commercial Tenancy (Retail Shops) Agreements Act 1985. A Disclosure Statement and a Tenant Guide should be sent to the proposed tenant at least seven (7) days before the Lease is entered into by the Tenant.

To: **NU-START SUPERANNUATION FUND**

(Agent's name and address) ("the Agent") As agent for the Lessor

I/We ("Lessee")

Full Name **ANDREW GAVIN BARR**
Address **8 MARNIE RD DARWINGTON**
Telephone: Work **08 9574 2062** Home

Full Name **LYNETTE MARIE BARR**
Address **8 MARNIE RD DARWINGTON**
Telephone: Work **08 9574 2062** Home **04 38929973**

ACN **107451810** ABN **33302193045**

Trading as **TOODYAY EMPORIUM**

hereby offers to take on lease the Premises as described in the Schedule on the terms and conditions set out in the Schedule.

SCHEDULE

1. DEFINITIONS

In this Contract the definitions in the Commercial Tenancy (Retail Shops) Agreements Act 1985 (WA) (as amended) ("Retail Shops Act") have the same meanings unless the context requires otherwise.

2. PREMISES TO BE LEASED including fixtures, fittings and accessories ("Premises")

NO 16 STIRLING TCE TOODYAY

having an area of m^2 approximately, (shown edged in red on the plan annexed hereto) together with a licence to use the car bays indicated on the plan.

3. LAND ("Land")

Lot **16** On Survey / Strata / Diagram / Deposited / Plan **1670**
and being the whole/part of the land in Certificate of Title Volume **444** Folio

4. LEASE TERM ("Term")

12 months commencing on the **FIRST** day of **MARCH** 20**20**
and expiring on the **FIRST** day of **MARCH** 20**21**

NOTE Pursuant to s.13 of the Retail Shops Act the Lessee is entitled to a 5 year term (or term plus options) unless the exclusions in s.13 apply.

5. PAYMENT OF RENTAL

(i) (a) Monthly Rent (Rent is exclusive of GST, see clause 33)
Rental payable without deduction monthly in advance by the Lessee to the Lessor on the **22nd** day of each calendar month shall be \$ **2260**

(in words) **Two Thousand Two Hundred & Sixty Dollars**

the first payment being due on the **22nd** day of **MARCH** 20**20**

(b) as per the attached annexure (if any)

* Delete and initial whichever of (a) and (b) do not apply

NOTE: THE AGENT IS UNDER A LEGAL DUTY NOT TO GIVE LEGAL ADVICE TO THE PARTIES WITH RESPECT TO THIS CONTRACT TO LEASE THEREFORE THE PARTIES ARE ENCOURAGED TO OBTAIN THEIR OWN INDEPENDENT LEGAL ADVICE BEFORE EXECUTING THIS CONTRACT.

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- (ii) **Deposit**
Payment of two (2) months rent and pro rata outgoings and car parking licence fee where applicable of \$ in advance is tendered with this offer, which is to be held by the Agent as stakeholder, and will be refundable in full in the event that the offer is not accepted.
- (iii) **Rent Review**
 - (a) The rental of the Premises will be reviewed _____ months from the commencement date of the Term of the lease and then every _____ months during the Term and on the last day of the Term and during the Further Term (if any) referred to in Clause 6(i). All rent reviews are to be based on market rental unless otherwise stated in Clause 5(iii)(b). The market rental will be calculated in accordance with the Retail Shops Act PROVIDED THAT the reviewed rent must take effect from the appropriate review date irrespective of when such reviewed rent is agreed or determined but until the reviewed rent is agreed or determined the Lessee will pay the rent at the rate previously due before review until agreement or determination when any shortfall will be payable upon demand or any over payment will be credited to the Lessee in respect of the next payment of rent due. No delay in implementing the rental review will prejudice the Lessor's right to review the rental at any time after the review date.
 - (b) Rent Reviews (if not market):

CPI

NOTE Only one method of rental review can apply on any review date.

- 6. **OPTION OF RENEWAL** Subject to the provisions of the Retail Shops Act:
 - (i) PROVIDED the Lessee is not in default at the time of exercise of the option then the Lessee will have the option to renew the Lease for a term of _____ months ("the Further Term") at the expiry of the Term upon the same terms and conditions as in the Lease save for the rent. The initial rent for the Further Term will be reviewable at the same periods as stated in the initial Term and upon the same basis. The option must be exercised not more than six (6) months nor less than three (3) months prior to the expiration of the initial Term, time being of the essence.
 - (ii) If after the expiration or sooner determination of the Term or any extension or renewal of it (including the Further Term) the Lessee remains in possession of the Premises with the consent of the Lessor then the Lessee will be a calendar monthly lessee of the Premises but otherwise at the same rental as that payable during the last month of the immediately preceding term and upon the same covenants conditions and provisions as contained in this document.
- 7. **OPERATING EXPENSES [DELETE IF NOT APPLICABLE]**
 - (i) The Lessee agrees to pay the relevant proportion of Operating Expenses (as defined in the Retail Shops Act) for the Premises as set out below: (Operating Expenses are exclusive of CST, see clause 33)

OPERATING EXPENSES
TO BE PAID FOR
BY LESSEE
(DENOTE WITH ✓)

[DELETE IF NOT APPLICABLE]

- Water Drainage and Sewerage Rates
- Local Authority Rates
- Land Tax and MTRIT (on a single ownership basis)
- Interest Charges on Outstanding Rates and Taxes
- Water Consumed
- Fire Services
- Cleaning, Including Window and Rubbish Removal
- Grounds Repairs and Maintenance
- Building Repairs and Maintenance of a Non-Structural Nature
- Building Insurance
- Plate Glass Insurance and Public Liability Insurance (to a minimum of \$10,000,000.00)
- Common Area, Lighting and Power
- Security
- Toilet Requisites
- Hot Water Systems Running, Repairs and Maintenance
- Electricity and Gas and Telephone Services Consumed in the Premises
- Air-conditioning Running, Repairs and Maintenance
- Lift Running, Repairs and Maintenance
- Strata Company Levy
- Half of Audit Fees
- Other:

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NOTE Separate provisions need to be made if the Lessee is to contribute to a sinking fund, marketing, promotion or reserve fund.

[DELETE IF NOT APPLICABLE]

(ii) The Lessee agrees to pay the Lessee's relevant proportion of the Operating Expenses pursuant to the Retail Shops Act as set out below:
**Delete and initial whichever of items (a) and (b) do not apply*

- (a) The Lessee's relevant proportion of the Operating Expenses must be paid within twenty eight (28) days after demand.
- [or] (b) The Lessee's relevant proportion of the Operating Expenses must be paid by equal calendar monthly instalments in advance in accordance with the statement forwarded by the Lessor or the Lessor's Agent which may be estimated on an annual basis and which must be adjusted at the expiration of the next year ending 30 June and pre-rated should the period be less than a full twelve (12) months period.

8. VOID INSURANCE POLICIES

The Lessee must not do or permit to be done any act or thing which makes void or voidable any insurance policies in respect of the Premises.

9. REPAIR AND MAINTENANCE OF PREMISES

- (i) The Lessee must at all times repair and maintain the Premises and any fixtures and fittings and utilities serving the Premises in the same condition as existing on the date the Lessee commences occupancy (except in respect of fair wear and tear or damage caused by acts or negligence of the Lessor or by events for which the Lessor has obtained insurance which is not vitiated or payment refused by any act or omission of the Lessee or the Lessee's Agents visitors or invitees) and the Lessee will make good any damage done by the Lessee.
- (ii) As often as the Lessor may reasonably require (not being more than once every _____ years) the Lessee shall decorate the internal parts of the Premises and in any event during the last six (6) months of the Term (howsoever determined) with the works to be carried out in a good and workmanlike manner using good quality materials to the same standard as at the commencement of the Lease Term.

10. ALTERATIONS AND ADDITIONS

No alterations or additions can be made to the Premises without written consent of the Lessor or the Agent representing the Lessor to be decided in the Lessor's absolute discretion and the Lessee must reinstate the Premises, if required by the Lessor, at the expiration of the Term or any extension of it.

11. SIGNS

The Lessee will not affix any sign to the Premises without the prior written consent of the Lessor and any relevant authorities but the Lessor's consent must not be unreasonably withheld.

The Lessee shall be responsible for:

- (i) ensuring that the erection of any signs has the prior approval of any relevant authorities;
- (ii) the removal of any signs at the expiration of the Term or prior to delivering up possession of the Premises and making good of any damage caused by removal; and
- (iii) maintain signs to a standard required by the Lessor and any relevant authorities.

12. USE OF PREMISES

- (i) The Premises shall only be used as

RETAIL - FURNITURE, GIFTWARE

("Permitted Use") and that use must always conform to all laws, by-laws, regulations or requirements currently in force as the case may be. The Lessee must obtain all necessary approvals required.

- (ii) The Lessor does not warrant that the Premises can be used for the Permitted Use.

13. COMMON AREAS

The Lessee is granted a licence at will to use all common areas (in common with the Lessor and all others entitled) which are necessary for access to and egress from the Premises and must do nothing which will inhibit or prevent the use of those areas by other lessees, their clients or suppliers.

14. NUISANCES - STATUTORY OBLIGATIONS AND NOTICES

The Lessee must cause no nuisance or annoyance to the Lessor or other lessees adjoining or adjacent to the Premises and must comply punctually with all orders requisitions statutes and regulations affecting the Premises and pass on to the Lessor copies of all statutory or local authority notices received in respect of the Premises.

15. DEFAULTS

Subject to any provisions to the contrary in the Retail Shops Act, if the Lessee shall default in payment of the rental or any other monies referred to or any part of it at any time is in arrears or unpaid for fourteen (14) days after it becomes due (whether any formal or legal demand has been made or not) or if the Lessee at any time defaults, fails or neglects to duly perform or observe any of the terms and conditions of this contract or the Lease contained or implied and on the part of the Lessee to be observed and performed and if the default continues for fourteen (14) days after notice in writing has been delivered or posted to the Lessee by the Lessor, or the Lessee (or permitted assigns) becomes subject to or take advantage of any law relating to bankruptcy or insolvency, or being a corporation goes into liquidation whether compulsory or voluntary (except for the purpose of reconstruction) then and in those cases it is lawful for the Lessor or any person or persons duly authorised by the Lessor in that behalf, to enter into or upon the Premises or any part of them without liability for trespass, to have again repossess and enjoy the former estate of the Lessor as if this contract had not been made without prejudice to any right or the Lease entered into, the cost of such re-entry or repossession to be a cost to be borne by the Lessee, but of action or remedy of the Lessor in respect of any antecedent breach of any of the terms by the Lessee contained in this document.

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16. INTEREST

Whenever the Lessee fails to pay money within fourteen (14) days after it has become due (whether formally demanded or not) then interest accrues on the unpaid monies at the rate of twelve per centum (12%) per annum calculated on a daily basis.

17. PROPERTY CONDITION STATEMENT

The Lessee must (if required by the Lessor) sign and deliver to the Lessor or the Agent within fourteen (14) days of execution of this Contract a property condition statement which evidences the physical condition of the Premises at the commencement of the Term.

18. SECURITY BOND

The Lessee must deposit with the Lessor's Agent a Bond of \$ _____ as security for the Lessee's compliance with the provisions of this contract which Bond may be applied to compensate and pay the Lessor for any breach or default of this contract by the Lessee and any and all costs of the Lessor relating to the same.

19. ACCESS TO PREMISES

The Lessee must permit the Lessor, the Lessor's Agent or consultants or contractors to have access to the Premises at all reasonable times upon at least forty eight (48) hours prior notice (except in the case of emergency).

20. NOTICES

Notices are deemed to be served if served in accordance with section 135 of the Property Law Act 1969 (as amended) and in the event of posting will be deemed to be served on the third business day after posting (unless returned undelivered).

21. ASSIGNMENT AND SUBLETTING

- (i) The Lessee shall not assign mortgage underlet or part with the possession or occupation of the Premises or any part of it unless the Lessee obtains the prior written approval of the Lessor, such approval not to be unreasonably withheld in the case of an assignment to a proposed assignee of good financial standing and of at least equivalent financial status to the Lessee and subject to the assignee providing such covenants and guarantees and satisfying all other requirements that the Lessor may reasonably impose.
- (ii) Sections 80 and 82 of the Property Law Act 1969 (WA) are hereby excluded.

22. PREMISES DESTROYED

If at any time during the Term the Building is substantially destroyed or damaged so that the Premises become unfit for habitation and use (provided the monies payable under any policy of insurance effected by the Lessor have not been rendered void through any act or default of the Lessee or the Agents servants licensees or invitees of the Lessee) the rent or a fair and just proportion of it according according to the nature and extent of the damage sustained (to be ascertained in case the parties cannot mutually agree by reference to a licensed valuer appointed by the Australian Property Institute (WA Division) shall be suspended and cease to be payable until the Premises are again rendered fit for habitation and use.

23. INDEMNITY

The Lessee indemnifies the Lessor and agrees to keep the Lessor indemnified against all claims costs expenses and demands incurred by the Lessor or any third party due to the use of the Premises by the Lessee or their employees Agents and licensees. The Lessee uses the Premises at the Lessee's own risk.

24. YIELD UP

At the expiry or sooner determination of the Term or any extension or renewal the Lessee must yield up and restore the Premises to the same state and condition as they were at the commencement of the Term in accordance with the obligations of the Lessee pursuant to this Contract.

25. QUIET ENJOYMENT

- (i) Provided always that all terms and conditions of the Contract have been complied with, the Lessor covenants with the Lessee that the Lessee is entitled to enjoy peaceful occupancy of the Premises.
- (ii) The covenants on the part of the Lessor in this Lease bind the registered proprietor for the time being of the Premises but do not render the Lessor personally liable in damages for any breach after the Lessor ceases to be the registered proprietor.

26. LEASE DOCUMENTATION

The Lessee will on demand by the Lessor execute a lease ("the Lease") prepared by the Lessor's solicitors incorporating all the details and agreements noted in this Contract and any other terms and covenants as the Lessor considers reasonable and necessary in the circumstances.

27. PRIORITY OF TERMS

In the event of a draft lease being appended to this Contract, the provisions of the draft lease appended to this Contract prevail over the provisions of this Contract to the extent of any inconsistency.

28. SPECIAL CONDITIONS

In the case of a conflict between the Special Conditions and any other provisions in this Contract, then the Special Conditions prevail.
(if insufficient space refer to annexure)

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CORPORATION'S STRATA UNIT
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29. STRATA LOT

The following provisions apply where the Premises are at the commencement date of the Term or at any time during the Term comprise the whole or part of a Strata Lot:

- (i) This Contract is subject in all respects to all easements rights reservations and powers mentioned in the Strata Titles Act 1985 (WA).
- (ii) The Lessee and the Lessee's employees and invitees have the right in common with the Lessor and all others entitled to use the common property comprised in the Strata Plan subject to the bylaws of the Strata Company and to all rules and regulations made by the Strata Company.
- (iii) The Lessee must duly and punctually pay and discharge all contributions levied by the Strata Company on the Lessor in respect of the Premises except those not payable pursuant to the Retail Shops Act.
- (iv) The Lessee must comply with all bylaws and all rules and regulations made by the Strata Company pursuant to its bylaws and the provisions of the Strata Titles Act 1985 (WA).
- (v) Unless the context otherwise requires, words and expressions defined in the Strata Titles Act 1985 (WA) have the same meanings here.
- (vi) The Lessor has the right to subdivide, execute easements or restrictive covenants, amalgamate or mortgage the Premises pursuant to the Strata Titles Act 1985 (WA) or any other legislation and the Lessee shall do all things reasonably required by the Lessor in respect of such matters.
- (vii) If the Premises are strata titled during the Term or any extension or renewal of it then the Lessee must enter into a deed at the request of the Lessor amending anything under this Contract or the Lease reasonably requiring amendment as a result of such strata titling.

30. GUARANTEE

- (i) In consideration of the Lessor accepting the Lessee's offer to lease at the request of the Guarantor, the Guarantor named herein (jointly and severally if more than one) unconditionally guarantee the due and punctual payment to the Lessor and performance of the Lessee's obligations pursuant to the Contract and indemnify the Lessor and covenant to keep the Lessor indemnified in respect of all monies which the Lessee become liable to pay to the Lessor and the performance of all terms covenants conditions and stipulations by the Lessee pursuant to this Contract.
- (ii) This guarantee and indemnity will not be affected by:
 - (a) any indulgence or concession given by the Lessor to the Lessee or the Guarantor;
 - (b) any variation of the provisions of the contract;
 - (c) the death or bankruptcy of the Lessee or the Guarantor;
 - (c) the Lessee's liability under this contract becoming invalid illegal or unenforceable through any act or omission.

GUARANTORS

Name

Name

Address

Address

31. SEVERABILITY

To the extent that any one or more of the provisions contained in this Contract is prohibited by any applicable law then those provisions and each of them to such extent ineffective without invalidating or modifying the remaining provisions which shall continue in full force and effect as if the prohibited provisions had not been included in this Contract.

32. CHATTELS

The Lessor's chattels described here are included in the Contract:

33. GST

- (a) In this clause the term 'GST' means any goods and services tax imposed under A New Tax System (Goods and Services) Act 1999 ('the GST Act') and its transitional and amending acts and regulations which is or may be levied or assessed or becomes payable in respect of rent, outgoings or in connection with the supply of the leased premises or any goods, services, facilities or other things by the Lessor to the Lessee under this contract or any extension, renewal or holding over.
- (b) The Lessee must pay to the Lessor any GST payable by the Lessor in accordance with the requirements of the GST Act. Those payments are to be made by the Lessee prior to the date for payment of the GST by the Lessor or on the dates for the payment of rent, whichever is the earlier. The Lessee hereby indemnifies the Lessor in relation to the payment of any GST.
- (c) Any rent or other payment obligation stated or referred to in this Contract does not include GST unless it is expressly included and GST must be paid in addition to that rent or payment obligation. Unless GST is expressly included, the consideration for any supply by the Lessor to the Lessee is increased by an amount equal to the amount of that consideration multiplied by the rate at which GST is imposed in respect of that supply.
- (d) The Lessor must provide to the Lessee a GST tax invoice as required by the GST Act.

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CORPORATION 1984 ACT
FOR USE BY RENA MEMBERS

SIGNED BY THE GUARANTOR

(Individual)

SIGNED by ANDREW GAVIN BARR
(FULL NAME)

[Signature]
Signature

in the presence of:

M Bolton
Signature of Witness

Monique Bolton
Print full name of Witness

207 GLEN FORREST DRIVE GLEN FORREST 6071
Address of Witness

[Blank]
Occupation of Witness

(Corporation)

[Blank]
Full name of Corporation

[Blank] ACN/ABN

EXECUTED BY THE GUARANTOR PURSUANT
PURSUANT TO S.127 OF THE CORPORATIONS ACT)
)
)
)
)

[Blank]
Sole / Director

[Blank]
Full Name of Director

| | | |
|--|----|----------------|
| Security Bond | \$ | <u>[Blank]</u> |
| Rent paid <input type="checkbox"/> / <input type="checkbox"/> / <input type="checkbox"/> | \$ | <u>[Blank]</u> |
| Stamp Duty | \$ | <u>[Blank]</u> |
| Receipt No | | <u>[Blank]</u> |
| Western Power Bond | \$ | <u>[Blank]</u> |

A true copy of this document has been received by each of the signatories.

[Blank]
[Blank]

/ /
/ /

SIGNED BY THE GUARANTOR

(Individual)

SIGNED by LYNETTE MARIE BARR
(FULL NAME)

[Signature]
Signature

in the presence of:

M Bolton
Signature of Witness

Monique Bolton
Print full name of Witness

207 GLEN FORREST DRIVE GLEN FORREST 6071
Address of Witness

[Blank]
Occupation of Witness

(Corporation)

[Blank]
Full name of Corporation

[Blank] ACN/ABN

EXECUTED BY THE GUARANTOR PURSUANT
PURSUANT TO S.127 OF THE CORPORATIONS ACT)
)
)
)
)

[Blank]
Sole / Director

[Blank]
Full Name of Director

| | |
|--|-------------------|
| Variable Outgoings | |
| <u>[Blank]</u> | <u>[Blank]</u> |
| Paid to <input type="checkbox"/> / <input type="checkbox"/> / <input type="checkbox"/> | \$ <u>[Blank]</u> |

[Blank]
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ACCEPTANCE

I/We (the Lessor)

NU-START SUPERANNUATION FUND

accept this offer and acknowledge the Agent's leasing fees are due and payable by us upon the Lessee taking possession of the Premises, or upon the execution of this Contract whichever is the earlier and are payable from any monies held by the Agent and any balance owing will be payable within seven (7) days of a request.

Dated the *1st* day of *March* 20*20*

SIGNED BY THE LESSOR OR THE LESSOR'S AGENT

SIGNED by

[Signature]
ANDREW GAVIN BARR
(FULL NAME)

in the presence of:

MONIQUE BOLTON
[Signature]
Signature of Witness
Print full name of Witness

SIGNED BY THE LESSOR OR THE LESSOR'S AGENT

SIGNED by

[Signature]
LYNETTE MARIE BARR
(FULL NAME)

in the presence of:

MONIQUE BOLTON
[Signature]
Signature of Witness
Print full name of Witness

205 GLEN FORREST DRIVE Address of Witness
GLEN FORREST
HAIRDRESSER Occupation of Witness

(Corporation)

Full name of Corporation

ACN/ABN

EXECUTED BY THE LESSOR PURSUANT
PURSUANT TO S.127 OF THE CORPORATIONS ACT

Sole / Director

Full Name of Director

205 GLEN FORREST DRIVE Address of Witness
GLEN FORREST
HAIRDRESSER Occupation of Witness

(Corporation)

Full name of Corporation

ACN/ABN

EXECUTED BY THE LESSOR PURSUANT
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Sole / Director

Full Name of Director