

Dealing Number



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1. Lessor RODNEY EILLIOTT MAULE AND SANDRA ANNETTE MAULE AS TRUSTEE UNDER INSTRUMENT 711087644	Lodger (Name, address, E-mail & phone number) Charltons Lawyers Solicitors, P O Box 518, BUNDABERG QLD 4670 (07) 4132 2311	Lodger Code BG919
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2. Lot on Plan Description	County	Parish	Title Reference
LOT 2 ON RP819383	NARES	CAIRNS	21576031

3. Lessee Given names	Surname/Company name and number	(include tenancy if more than one)
	YARRA GLEN POTTERY PTY LTD ACN 010 354 346 AS TRUSTEE FOR THE HARRIS FAMILY TRUST (NO. 2)	

4. Interest being leased
FEE SIMPLE

5. Description of premises being leased
The whole of the land

6. Term of lease	7. Rental/Consideration
Commencement date/event: 08/08/2011	See attached schedule
Expiry date: 07/08/2016 2024	
#Options: 5 4 x 5 years	
#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.

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

.....signature		
.....full name		
.....qualification	/ /
Witnessing Officer	Execution Date	Lessor's Signature

.....signature		
.....full name		
.....qualification	/ /
Witnessing Officer	Execution Date	Lessor's Signature

(Witnessing officer must be in accordance with Schedule 1 of 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.

Title Reference 21576031

/ /
Execution Date **Lessee's Signature**
YARRA GLEN POTTERY PTY LTD
A.C.N. 010 354 346
DAVID GEORGE HARRIS – DIRECTOR

9. Acceptance

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

/ /
Execution Date **Lessee's Signature**
YARRA GLEN POTTERY PTY LTD
A.C.N. 010 354 346
SHARON MERLE HARRIS – DIRECTOR/SECRETARY

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This is the schedule referred to in items 7 and 8 of lease dated / /

REFERENCE SCHEDULE

Item 1	Landlord	:	<u>RODNEY ELLIOTT MAULE and SANDRA ANNETTE MAULE</u> as Trustee under Instrument 711087544
Item 2	Landlord's Address	:	54 Jarman Street, Barlows Hill, Yeppoon 4703
Item 3	Tenant	:	<u>YARRA GLEN POTTERY PTY LTD A.C.N. 010 354 346 as trustee for the Harris Family Trust (No.2)</u>
Item 4	Tenant's Address	:	Unit 5503, 323 Bayview Street, Hollywell Qld 4216
Item 5	Address of Motel	:	37-41 Digger Street, Cairns. 4820
Item 6	Phone Number of Motel	:	(07) 4051 2599
Item 7	Rent	:	\$290,000.00 per annum plus GST
Item 8	CPI Review Dates	:	Each anniversary of the Commencement Date except for those dates which are Market Review Dates
Item 8A	Market Review Dates	:	The first day of each five (5) year Option Period
Item 9	Permitted use	:	Motel
Item 10	Guarantor	:	<u>DAVID GEORGE HARRIS and SHARON MERLE HARRIS</u>
Item 11	Option periods	:	Four (4) <u>Five (5)</u> Options of five (5) years each
Item 12	Public Risk	:	\$10,000,000.00
Item 13	AAA Rating	:	3.5 star

1. UNDERSTANDING THIS LEASE

1.1 THE MEANING OF CERTAIN WORDS

If a word appears in **bold print** throughout this **lease**, then it will have the following meaning.

~~**AAA:** the motoring club, association or body in the State in which the motel is located which is affiliated with the Automotive Association of Australia and includes its successors.~~

AAA: AAA Tourism Pty Limited ACN 087 199 504, or if that Company ceases to be registered or ceases to prepare the AAA Report, the Company or person which in the opinion of the **landlord** is most appropriate to prepare the **AAA report** for the **motel**.

AAA Rating: the star rating set out in the first **AAA report** obtained after the **commencement date**~~particulars~~ or any other rating agreed by the **tenant** and the **landlord**.

AAA Report: the hotel, motel classification assessment for the **motel** prepared by the **AAA** under the Australian Star Rating Scheme or any amendment to that scheme or other scheme in replacement thereof.~~national Accommodation Classification Scheme.~~

air-conditioning equipment: the plant, machinery, duct work and equipment used to heat, cool or circulate air within the **building** or any part of it but not including individual wall mounted units.

building: all structures and improvements that already exist or are erected on the **land** during this **lease**. This includes the **landlord's property** and any modifications, extensions or alterations of the **building** or the **landlord's property**.

business name: the business or trade name of the **motel** and any business or trade name registered or used by the **tenant** in connection with the **motel**.

Commencement Date: the **commencement date** set out on the Form 7

Competent authority: any court, state federal or local government authority, instrumentality or body, or any other person having jurisdiction over the **motel**, the **landlord's property**, or the **tenant's property**.

CPI: The Consumer Price Index (all Groups) for the capital city of the State in which the **motel** is located as published by the Australian Bureau of Statistics.

If the **CPI** no longer exists or is changed so that it does not (in the **landlord's** reasonable opinion) reflect the changes which have occurred in the cost of living for that capital city during any year, then **CPI** means that index agreed upon by the **landlord** and the **tenant**.

End of the lease: the **expiry date** or the date that the **lease** is terminated as a result of default.

Expiry date: the **expiry date** set out on the Form 7.

Dispose: to assign, transfer, sub-let, demise, part with, declare a trust, assign for the benefit of creditors, mortgage or charge, share the possession of, or grant any licence affecting, or otherwise dealing with, or the disposing of any estate or interest in the **motel** or the rights and powers under this **lease** or of any estate or interest in the **tenant's business**.

Insolvency event: includes:-

- (i) a winding up order is made; or
- (ii) a liquidator or provisional liquidator is appointed; or
- (iii) a meeting is convened or resolution passed to appoint an official manager in respect of a corporation; or
- (iv) a corporation enters into, or resolves to enter into, a scheme of arrangement or composition with, or assignment for the benefit or, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them; or
- (v) a corporation resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, or is otherwise wound up or dissolved; or
- (vi) a corporation is or states that it is unable to pay its debts when they fall due; or
- (vii) a corporation takes any steps to obtain protection or is granted protection from its creditors, under any applicable legislation; or
- (viii) a person becomes an insolvent under administration as defined in Section 9 of the Corporations Law or action is taken which could result in that event; or
- (ix) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

Land: the property described in the statutory form.

Landlord's agents: employees, agents, contractors, consultants, customers, workmen, invitees, clients, and visitors (whether with or without invitation) or any other person who may claim through or under the **landlord**.

Landlord's property: all the plant and equipment, fixtures and fittings of the landlord.

This clause includes the following types of items (this is not an exhaustive list);

- ❖ **services**
- ❖ *toilet amenities and wash basins;*
- ❖ *the floor, wall and bathroom tiles;*
- ❖ *built-in cupboards and shelves;*
- ❖ *hot water system;*
- ❖ *all paving and sealed driveway and parking areas;*
- ❖ *drainage and conduits;*
- ❖ *gas and electrical fittings and wiring;*
- ❖ *other property in, or fixed to the **motel** that is not the **tenant's property**.*

Lease: includes the statutory form, the **particulars**, all plans and annexures.

Liquor licence: the liquor licence attaching to the **motel** (if any).

Liquor Act: the legislation for the State in which the **motel** is located which regulates the sale and distribution of liquor.

Motel: the premises described in the statutory form to this **lease** including the **land** and the **Building**.

Outgoings: the costs incurred by the **landlord** in respect of the **landlord's** ownership and supply of the **motel**, including:

- (i) rates, taxes (including land tax on a single holding basis), charges and other levies payable to a **competent authority** for the **motel** (this includes a goods and services tax or equivalent whether present or future); ~~however does not include Land Tax where the motel is in Queensland~~; and
- (ii) Insurance premiums and other charges in connection with insurance cover against insurable risks which the **landlord** considers are appropriate for the **motel** for any reason, the **tenant's business** and this **lease** (including loss of profits) and including any excesses payable on claims made;

Particulars: the particulars to this lease.

Redecorate: paint, repaint, recover, clean and otherwise treat with materials all of the interior and exterior of the building;

Rent: The yearly rent specified in Item 6 of the **particulars** as varied by the terms of this **lease**.

Review dates: those dates specified in the **particulars**.

Services: the services running through or servicing the **motel**.

This clause includes the following (this is not an exhaustive list)

- ❖ *power;*
- ❖ *water;*
- ❖ *gas;*
- ❖ *sewerage;*
- ❖ *drainage;*
- ❖ *the **air conditioning equipment**;*
- ❖ *fire sprinkler and fire protection systems;*
- ❖ *alarm systems;*
- ❖ *automatic opening and closing door systems;*
- ❖ *lifts and elevators;*
- ❖ *telecommunications;*

- ❖ *piped music; and*
- ❖ *public address system.*

Tenant's agents: employees, agents, contractors, consultants, customers, workmen, invitees, clients, and visitors (whether with or without invitation) subtenants and licensees or any other person who may claim through or under the **tenant**.

Tenant's business: the motel business and any other business conducted by the **tenant** in the **motel** including, but not limited to, any licensed restaurant or entertainment facility or any conference, tourist or hospitality related facility.

Tenant's property: all property, plant and equipment, fixtures and fittings owned and used by the **tenant** in the operation of the **tenant's business** excluding any items of property that are the **landlord's property**.

This clause includes the following (this is not an exhaustive list)

- ❖ *movable furniture;*
- ❖ *office equipment;*
- ❖ *individual air conditioning units (NOT the **air conditioning equipment**);*
- ❖ *carpets or loose floor coverings;*
- ❖ *curtains and blinds;*
- ❖ *light fittings;*
- ❖ *other property in, or fixed to the **Motel** that is not the **landlord's property**.*

1.2 MORE THAN 1 TENANT

If there is more than one **tenant**.

- (a) the obligations contained in this **lease**, apply to each **tenant** individually and to any two or more **tenants** together; and
- (b) any one **tenant** may exercise rights in relation to this **lease** on behalf of all of the **tenants**, and all the **tenants** will be bound.

1.3 GENERAL

- (a) Governing Law: this **lease** is governed by the law in the State in which the **motel** is located.
- (b) Exercise of Rights:
 - (i) the **landlord** may exercise a right, power or remedy at its discretion, and separately or together with another right, power or remedy; and
 - (ii) If the **landlord** does not exercise or delays in exercising a right, power or remedy, the **landlord** may still exercise it at a later time; and
 - (iii) the **landlord** is not liable for any loss caused by the exercise, attempted exercise, failure to exercise or delay in exercising a right, power or remedy under this **lease**.

- (c) Waiver and variation: Any provision or right under this **lease** may only be waived or varied in writing signed by the parties to be bound.
- (d) Additional Remedies: The rights, powers and remedies provided in this **lease** are in addition to (not exclusive) the rights, powers or remedies provided by law.
- (e) Future legislation: Any present or future legislation which varies the obligations of the **tenant** or the **guarantor** under this **lease** so that the **landlord's** rights, power or remedies are adversely affected is excluded to the extent allowed by law.
- (f) Executive documents: The **tenant** and the **guarantor** must, at their expense, if asked, execute and cause their successors to execute any documents and to everything else necessary to bind the **tenant** or the **guarantor** and its successors under this **lease**.
- (g) Exclusion of statutory provisions: the following provisions do not apply in this **lease**:-
 - (i) If the **motel** is located in Queensland- sections 105, 107, 109, and 112 of the *Property Law Act 1974 (Qld)*; and
 - (ii) if the **motel** is located in New South Wales – sections 34,84, 132, 133, 133A and 133B of the *Conveyancing Act 1919 (NSW)*.
- (h) Prior obligations: The **end of the lease** does not affect the **tenant's** or the **guarantor's** obligations:-
 - (i) to make any payment under this **lease**, due before the **end of the lease**; or
 - (ii) to provide information to the **landlord** to enable it to calculate those payments.
- (i) Severability: If any part of this **lease** is void, unenforceable or illegal then it may be severed from this **lease**. The remainder of this **lease** has full force and effect.
- (j) Counterparts: This **lease** may consist of a number of separate parts. All of the parts together make up one and the same document.
- (k) Entire Agreement: This **lease** is the entire agreement between the parties.
- (l) Representations: The **landlord** and the **tenant** both agree that they have not been induced to enter into this **lease** by any representation, verbal or otherwise, made by or on behalf of the other party and which is not set out in this **lease**.
- (m) Rent and other moneys: The **tenant** and the **guarantor** must make payments under the **lease** without set-off or counterclaim and free from deduction.
- (n) May demand difference: If the **tenant** or the **guarantor** pays an amount and it is found later that the amount payable should have been higher, the **landlord** may demand payment of the difference.
- (o) Demand not required: The **landlord** need not make demand for any amount required to be paid by the **tenant** under this **lease** unless expressly stated otherwise.
- (p) At tenant's cost: Anything which the **tenant** is required to do under this **lease** must be done at the **tenant's** cost unless expressly stated otherwise.

- (a) A reference to any organisation (Example: the Law Society, Insurance Council of Australia, the ~~Australian Institute of Valuers and Land Economists~~ [Australian Property Institute](#) or any **competent authority**) means the organisation in the State in which the **motel** is located.
- If the organisation no longer exists then it will be the organisation that the **landlord** considers has similar powers or functions.
- (b) A reference to any legislation (or any section) includes any amendment, re-enactment or substitution for it and any regulation issued under it.
- (c) A reference to the **landlord's** right of access to the motel includes all persons authorised by the **landlord**. (This will include agents, professional advisers, contractors, workmen and others.)
- (d) A reference to any whole includes any part.
- (e) A reference to "month" means a calendar month.
- (f) Any obligation by the **tenant** not to do any act or thing includes an obligation not to permit and to use its best endeavours to prevent such act or thing being done.
- (g) The singular indicates the plural and vice versa.
- (h) Any gender includes the other gender.
- (i) A reference to a person includes an individual and a corporation.
- (j) A reference to any party in this **lease** includes its successors and assigns.
- (k) Every obligation or covenant is a separate and independent covenant.
- (l) The headings and examples in this **lease** are included for convenience only and do not affect the interpretation of this **lease**.
- (m) Anything that is required to be done on a Saturday, Sunday or public holiday in the place where the **motel** is situated, may be done on the next business day.
- (n) All obligations under this **lease** must be performed punctually and properly.
- (o) If this **lease** requires the **tenant** to obtain the consent or approval of the **landlord** for any action then the **tenant** must obtain the consent or approval in writing before starting to take the action.
- (p) If the **landlord** is requested to consent to any thing under this **lease** then that consent must not be unreasonably withheld.
- (q) If the **landlord** has agreed to obtain a person's consent in respect of anything in connection with this **lease** then the **landlord** must do everything reasonably necessary to obtain that consent.
- (r) The **tenant** authorises the **landlord** and its solicitors before at or after the Commencement Date to complete any blanks in this Lease with a proper date or to make any formal correction necessary to enable registration of this **lease**.

2. Term

2.1 INITIAL TERM

This **lease** begins on the **commencement date** and ends on the **expiry date**.

2.2 GRANT OF OPTION

- (a) The **landlord** must grant a further lease of the **motel** to the **tenant** for each of the **option period(s)** if the **tenant** has observed and performed all of the terms, covenants and restrictions in this **lease**.
- (b) The **tenant** must, if the **tenant** does not wish to be granted a further lease, give notice to the **landlord** at least 3 months before the **expiry date**.

*To avoid any doubt, the options are automatic and the **tenant** does not need to give notice to the **landlord** to exercise the option period. However the **tenant** must give 3 months notice to the **landlord** if it does not want to exercise the option.*

2.3 TERMS OF THE FURTHER LEASE

The further **lease** will be on the same terms as this **lease**, including any **guarantor** in existence immediately prior to the last preceding term which shall continue to have effect for the further term whether re-executed by the **guarantor** or not, except that;

- (a) the number of **option period(s)** specified in [Item 11 of the particulars](#) is reduced by 1, [Item 13 sets out the AAA Rating determined pursuant to the definition of AAA Rating in Clause 1.1 and Clauses 6.1\(f\) and 7.1\(h\) will be deleted from the new lease](#); and
- (b) Once the last **option period** has been exercised clauses 2.2 and 2.3 are to be deleted from the further **lease**; and
- (c) the **rent** for each further **lease** will be determined in accordance with Clause 3.

2.4 HOLDING OVER

If the **tenant** remains in occupation of the **motel** after the **expiry date** then the occupation:

- (a) is to be on a monthly tenancy; and
- (b) is on the same terms and conditions as this **lease** so far as they relate to a monthly tenancy; and
- (c) may be terminated by either party by giving the other party 1 months written notice. *(For example if the tenant gives notice to the landlord on 15 May then the lease will terminate on 15 June.)*

3. RENT

3.1 RENT

- (a) The **tenant** must pay the **rent** to the **landlord**.
- (b) The **rent** must be paid:

- (i) by equal monthly instalments in advance: and
 - (ii) on the First day of each month; and
 - (iii) If the **lease** commences on a day other than the First of the month then the first Payment of **rent** must be apportioned on a daily basis.
- (c) The first instalment of **rent** must be paid on the **commencement date**.
- (d) The **tenant** must not make any deduction from the **rent**.

3.2 CPI RENT REVIEW

~~(a) On each **CPI review date** the **rent** must be reviewed to an amount equal to:~~

~~$$\frac{A = B \times C}{D}$$~~

~~Where:~~

~~A = the **rent** payable immediately before the **review date**; and~~

~~B = the **CPI** published immediately before the **review date**; and~~

~~C = the **CPI** published immediately before the preceding **review date** (or the second anniversary of the **commencement date** if this is the first rent review of the initial term);~~

~~(b)(a) The reviewed **rent** ("A") must not be less than the **rent** paid before the **review date**.~~

(a) On each Review Date the rent must be reviewed to an amount equal to:

$$\frac{A = B \times C}{D}$$

Where:

A = the reviewed Rent; and

B = the Rent payable immediately before the Review Date; and

C = the CPI published immediately before the Review Date; and

D = the CPI published immediately before the preceding Review Date (or the Commencement Date if this is the first rent review).

(b) The reviewed Rent ("A") must not be less than the Rent paid before the Review Date.

~~3.3 MARKET REVIEW~~

- ~~(a) This clause 3.3 applies if Market Review Dates are inserted in Item 8A of the Reference Schedule.~~
- ~~(b) The **landlord** may notify the **tenant** of the **Rent** that it considers to be the market rent within 3 months before and 3 months after a Market Review Date.~~
- ~~(c) If the **landlord** and the **tenant** have not agreed on the market rent within 30 days after service of the Landlord's notice, the dispute must be referred for determination by a Valuer to be nominated by the president of the Australian Institute at the request of either party.~~
- ~~(d) The nominated Valuer must determine the market rent at the particular Market Review Date acting as an expert and not as an arbitrator and give a written determination with reasons within 30 days of his appointment.~~
- ~~(e) Subject to clause 3.4 the Valuer's determination is final and binding on the **landlord** and the **tenant**.~~
- ~~(f) The Valuer's costs must be paid by the **landlord** and the **tenant** equally. Either party may pay the Valuer's costs and recover one half of the amount paid from the other party.~~
- ~~(g) If the **landlord** does not give the **tenant** a notice under sub-clause (b) the Market Review Date will be treated as a CPI Review Date.~~

~~3.4 No decrease in Rent~~

~~The reviewed **rent** must not be less than the **rent** payable before the **review date**.~~

4. OTHER COSTS

4.1 OUTGOINGS

The **tenant** must:

- (a) pay the **outgoings** on or before their due date; and
- (b) provide evidence of payment of the **outgoings** to the **landlord**, on demand.

4.2 SERVICE COSTS

The **tenant** must pay all costs charged in relation to the **services** provided to the **motel** or in relation to the **tenant's business**, whether charged to the **landlord** or the **tenant**.

4.3 LEGAL COSTS

- (a) The **landlord** must pay their own costs in relation to the negotiation, preparation, and completion of this **lease**.
- (b) The **tenant** must pay:
 - (i) their own costs in relation to the negotiation, preparation, and completion of this **lease**;
 - (ii) all stamp duties assessed on this **lease** (regardless of when the duty is assessed); and

- (iii) registration fees (including registration fees on the exercise of the option); and
- (iv) survey fees; and
- (v) the **landlord's** reasonable costs:
 - (A) if the **landlord** is made a party to any litigation commenced by or against the **tenant** without default on the part of the **landlord**; and
 - (B) of obtaining the consent of the **landlord's** mortgagee; and
 - (C) associated with the exercise of an **option period** including the preparation, execution and stamping of the new **lease**; and
 - (D) in relation to an assignment, subletting or surrender of this **lease**; and
 - (E) in considering any request for the **landlord's** consent required under this **lease**; and
 - (F) in relation to the signing of documentation required of a mortgagee of this **lease** or the **tenant's business**; and
 - (G) resulting from the default of the **tenant**;

4.4 INTEREST ON LATE PAYMENTS

- (a) the **tenant** must pay interest on any monies that are due and payable under this **lease** and have not been paid within 14 days from the due date.
- (b) Interest is charged at the rate of 2% over the annual overdraft rate for an equal sum of money that is charged by the **landlord's** bank.
- (c) Interest is payable from the date that the monies were due until the date that the monies are actually paid.
- (d) This clause does not prevent the **landlord** from exercising any other right under this **lease**.

4.5 TENDER AFTER DETERMINATION

If the **landlord** makes a demand for any money or if the **tenant** tenders any money after a default under this **lease** the acceptance of the money by the **landlord**:

- (a) does not prevent the **landlord** from exercising any other right under this **lease**; and
- (b) is not an election by the **landlord** not to exercise any other right.

5. ASSIGNMENT AND OTHER PROHIBITED DEALINGS

5.1 PROHIBITED DEALINGS

The **tenant** must not, without the written consent of the **landlord**:

- (a) Sublet; or

- (b) License; or
- (c) Franchise; or
- (d) Part with possession of the **motel**; or
- (e) Assign this **lease**; or
- (f) Mortgage this **lease** or the **tenant's business**.

5.2 CONSENT

The **landlord** must consent to the proposed assignment if:

- (a) the **landlord** has, by notice in writing, rejected the **tenant's** offer to purchase the **tenant's business** made under clause 5.6; and
- (b) the **tenant** has transferred to the proposed assignee the **business name**; and
- (c) if the **tenant** is a corporation which incorporates the **business name**, the **tenant** has changed the name of the corporation; and
- (d) the proposed assignee is a respectable and financially sound person who is capable of:
 - (i) paying the **rent** and **outgoings**; and
 - (ii) performing all other obligations under this **lease**; and
 - (iii) paying for the **tenant's business**.
- (e) the proposed assignee has a good reputation and business skills which, in the [reasonable](#) opinion of the **landlord**, will enable the proposed assignee to conduct the **tenant's business** competently; and
- (f) any default has been remedied by the **tenant** or waived by the **landlord**; and
- (g) the proposed assignee executes an instrument agreeing with the **landlord** to be bound by this **lease** as if the proposed assignee were the **tenant**. The instrument must be in a form approved by the **landlord** and may include, but it is not limited to, the obligation to indemnify the **landlord** as provided in this **lease** and a power of attorney in the same form as in this **lease** will be prepared and stamped by the **landlord's** solicitors at the expense of the **tenant**;
- (h) if the proposed assignee is a corporation, any guarantee required under Clause 5.7 is provided; and
- (i) the proposed assignee provide evidence that all insurances required under Clause [78](#) have been taken out;
- (j) the **tenant** and the proposed assignee comply with all reasonable requirements of the **landlord** including the delivery to the **landlord** of a copy of all documents which evidence the consideration for the relevant assignment and the level and terms of the proposed assignee's borrowings.

5.3 ASSIGNMENT NOT EFFECTIVE

As assignment does not take effect against the **landlord** until:-

- (a) clause 5.2 has been complied with;
- (b) the **tenant** and the proposed assignee have executed and given to the **landlord** a stamped transfer of this **lease** in the form required by the **landlord**; and
- (c) the date agreed to by the **landlord**, the **tenant** and the proposed assignee.

5.4 CHANGE IN CONTROL OF TENANT

- (a) If the **tenant** is a corporation, the **tenant** must notify the **landlord** if any persons who own a majority of shares in the corporation **disposes** of those shares (except as a result of transfers by inheritance);
- (b) Upon receiving notice from the **tenant** the **landlord** may deed the change to be an assignment of this **lease**;
- (c) This clause does not apply if the **tenant** is a corporation which is listed on a recognised Stock Exchange in Australia or at least 80% of its voting shares are owned by another company which is so listed.

5.5 MORTGAGES

- (a) If the **tenant** has requested the **landlord's** consent to mortgage this **lease** or the **tenant's business** the **landlord** must consent if:
 - (i) the **tenant** satisfies the **landlord** (acting reasonably) that the proposed mortgage or charge would not prevent the **tenant** from paying the **rent** and **outgoings**; or
 - (ii) the proposed mortgage or charge is to be given to any bank; and
- (b) the **landlord** must sign any documentation that the proposed mortgagee may reasonably require as a condition of granting the loan to the **tenant**.

5.6 DISPOSAL OF TENANT'S BUSINESS

- (a) the **tenant** must, prior to **disposing** of the **tenant's business**, offer the **tenant's business** to the **landlord** on the same terms and conditions and at the same price as any proposed **disposal**;
- (b) the **landlord** has 14 days from receiving the **tenant's** offer to accept it in writing;
- (c) if the **landlord** accepts the **tenant's** offer:
 - (i) the parties must enter into a contract immediately;
 - (ii) the contract is to be prepared by the **tenant's** solicitors; and
 - (iii) the contract must incorporate the terms of the offer; and
 - (iv) the contract must include any other reasonable terms applying to the sale of a leasehold motel business.
- (d) if the **landlord** does not accept the offer, the **tenant** may (if consent is obtained in accordance with clause 5.2) **dispose** of the **tenant's business** on the same terms and conditions as offered to the **landlord**.

5.7 GUARANTEES ON ASSIGNMENT OR CHANGE IN CONTROL OF TENANT

If asked by the **landlord**, the **tenant** must obtain a guarantee and indemnity of:

- (a) the obligations to be assumed by the proposed assignee (if the assignee is a corporation) under this **lease**, given by a person acceptable to the **landlord**; or
- (b) the obligations of the **tenant** under this **lease** (in the case of a person becoming or ceasing, to be a director or shareholder of the **tenant**), is given by the proposed new director or shareholder of the **tenant** given by the proposed new director or shareholder of the **tenant**.

5.8 TENANT'S OPTION

- (a) the **landlord** must, prior to disposing of the **motel**, offer the **motel** to the **tenant** on the same terms and conditions and at the same price as any proposed **disposal**;
- (b) the **tenant** has 14 days from receiving the **landlord's** offer to accept it in writing;
- (c) if the **tenant** accepts the **landlord's** offer:
 - (i) the parties must enter into a contract immediately; and
 - (ii) the contract is to be prepared by the **landlord's** solicitors; and
 - (iii) the contract must incorporate the terms of the offer; and
 - (iv) the contract must include any other reasonable terms applying to the sale of a leasehold motel business.
- (d) if the **tenant** does not accept the offer, the **landlord** may **dispose** of the **motel** on the same terms and conditions as offered to the **tenant**.

5.9 ASSIGNMENT BY LANDLORD

If the **landlord disposes** of the **motel** to any person other than the **tenant**, the **landlord** must obtain from the purchaser a covenant in favour of the **tenant** that;

- (a) the purchase will recognise and be bound by an **option period** and the other terms of this **lease** as the **landlord**; and
- (b) the purchaser **disposes** of the **motel** to any other person other than the **tenant** then the purchaser will obtain a covenant from the subsequent purchaser in terms similar to this Clause whereupon the assigning **landlord** shall be released from all liability to the **tenant** in relation to the grant of options to extend this **lease** unexercised.

6. USE OF THE MOTEL

6.1 WHAT THE TENANT MUST DO

The **tenant** must, at its own cost:

- (a) Permitted Use: use the **motel** for the **permitted use** only; and

- (b) Trading Hours: keep the **motel** open for business each and every day of the **term** subject to any restrictions imposed by law; and
- (c) Operation of Business: conduct the **tenant's business** at all times in good faith, in a reputable manner and to the best of the **tenant's** ability; and
- (d) Compliance with Laws: comply with all laws in relation to the **motel**, the **tenant's business** or the **permitted use**; and
- (e) Licenses/Permits: take out and maintain all licences, permits and registrations required by any **competent authority** for the carrying on of the **tenant's business**;
- (f) Air Conditioning Equipment:
 - (a) Advise the **landlord** when the **air conditioning equipment** requires maintenance and service and repair
 - (b) Notify the **landlord** if the **air conditioning equipment** becomes dysfunctional or reaches the end of its useful working life
 - (c) If the **tenant** gives a notification under sub-clause (a) above the **landlord** must at the **landlord's** cost replace the **air conditioning equipment** with a split cycle wall mounted unit adequate for the purpose and the split cycle unit shall become the property of the **tenant** and the **tenant** will maintain and replace the split cycle unit thereafter

~~**Air conditioning Equipment in Guest Rooms**~~

~~(i) Maintain, service and repair the **air conditioning equipment**; and~~

~~(ii) Replace any of the **air conditioning equipment** which becomes dysfunctional or reaches the end of its useful working life.~~

~~**Air Conditioning Equipment** servicing the Office and areas which are not Guest Rooms~~

~~(iii) Maintain, service and repair the **air conditioning equipment**; and~~

~~(iv) Notify the Landlord if the **air conditioning equipment** becomes dysfunctional or reaches the end of its useful working life.~~

~~To remove doubt it is acknowledged that~~

~~(a) any of the **air conditioning equipment** which is replaced by the **tenant** will become the **Landlords Property**; and~~

~~(b) If the **tenant** gives the **landlord** a notification under sub-clause (iv) the **landlord** must, at the **Landlords** cost, replace the **air conditioning equipment**.~~

- (g) Services: keep and maintain the roof guttering, waste pipes, drains, water supply, plumbing, conduits and other equipment or services in a clear and free flowing condition. If necessary the **tenant** must employ licensed tradesmen to clear any blockages; and
- (h) Grease Traps: have all grease traps in the **motel** serviced regularly; and
- (i) Refuse: cause all waste, trash, refuse, food and other garbage to be removed daily outside of normal trading hours; and
- (j) Infectious Diseases: where any infectious disease occurs in the **motel** which requires notification under **legislation**;

- (i) give the required notices to the **competent authority** and give notice to the **landlord**; and
- (ii) thoroughly fumigate the disinfect the **motel**; and
- (k) Fire Safety:
 - (i) comply with all laws and requirements of any **competent authority** relating to fire safety; and
 - (ii) comply with any notice given by the **landlord** in respect of fire safety; and
- (l) Signs: only use advertisements or signs that are usual for the **permitted use** and complies with the law or the requirements of a **competent authority**; and
- (m) AAA Report:
 - (i) ensure that an **AAA Report** is prepared after the regular AAA inspection; ~~each year~~;
 - (ii) provide the **landlord** with a copy of each **AAA Report** received by the **tenant**;
 - (iii) comply with all requirements and recommendations contained in the **AAA Report** within the time specified or, if no time is specified, within a reasonable time.

*(To remove any doubt the **tenant** does not need to carry out any work of a structural nature that is required or recommended in the **AAA Report**)*

- (n) The **Tenant** shall:-
 - (i) within 21 days of whenever being requested in writing to do so, provide to the **landlord** copies of the trading and profit and loss accounts of the **motel** business for the respective three (3) years ended on the thirtieth (30) day of June last prior to the date of such request;
 - (ii) after reasonable prior notice permit the **landlord's** valuer to enter the motel and inspect its contents and records and truthfully respond to his inquiries to enable him to value the **landlord's** interest in the **motel** .

PROVIDED ALWAYS that no such request shall be made by the **landlord** unless it proposed to sell the subject property or seeks to refinance its loan secured thereon (in which latter case the **tenant's** obligations under this clause shall be fulfilled by forwarding such copies to the **landlord's** nominated proposed lender.

- (o) Driveways and Parking Areas: maintain and repair all driveways and parking areas.
- (p) Vermin: Treat the **motel** for vermin at such times as are required to ensure that the **motel** remains free of vermin.

6.2 WHAT THE TENANT MUST NOT DO

The **tenant** must not

- (a) Business Name: without the consent of the **landlord**;
 - (i) **dispose** of, alter, or change the **business name**: or
 - (ii) use the **business name** as a company name or in connection with a corporation.

- (b) Annoying Conduct: carry on any annoying noxious, or offensive conduct or any illegal business occupation or practice; or
- (c) Nuisance: do anything which is or becomes an annoyance, nuisance, grievance or disturbance to the **landlord**, persons lawfully in the **motel** or occupiers or owners of any neighbouring premises; or
- (d) Source of Power: use any form of light, power or heat other than electric current. However the **tenant** may use alternative methods of power or lighting (other than an exposed flame) during any period of power failure or power restrictions; or
- (e) Electrical Equipment: install or connect any electrical equipment in the **motel** that may overload the cables, switchboards or sub-boards through which the electricity is conveyed to the **motel** without the **landlord's** prior consent; or
- (f) Landlord's Property: use the **landlord's property** for any purpose other than those purposes for which they were designed or constructed; or
- (g) Inflammable Substances: bring on or store in the **motel** any explosives, inflammable or corrosive fluids or chemicals. However the **tenant** may store in the **motel**, confined in proper containers, those fluids or chemicals that are normally used in the conduct of the **motel**.

7. MAINTENANCE REPAIR AND ALTERATIONS

7.1 WHAT THE TENANT IS RESPONSIBLE FOR

The **tenant** must:-

- (a) keep the **motel** (includes the exterior façade of the **building**, exterior and interior windows and doors and all plate glass, glass fixtures, carpets and signage) and the **landlord's property** clean and in good repair; and
- (b) keep the **tenant's property** clean and in good repair; and
- (c) repair any damage to the **motel** and the **landlord's property** caused by the **tenant** or the **tenant's agents**; and
- (d) replace damaged plate glass and other glass in the **building** with glass of similar quality; and
- (e) maintain and repair the services; and
- (f) maintain the **AAA Rating**.
- (g) Whilst an **AAA rating** exists the **tenant** must without limiting the **tenant's obligations** otherwise under this sub-clause or under sub-clause 7.2 ~~redecorate~~ **re-decorate** the **motel** when reasonably required by the **landlord** to do so but not more frequently than once in each period of seven years from the **date of commencement** of the initial term of the **lease**.
- (h) Notwithstanding the provisions of 7.1(g) above the cost of repainting the exterior of the **motel** on the first occasion painting is required after the **date of commencement** the **landlord** and the **tenant** shall share the cost of the external painting equally.

7.2 IF THE AAA RATING CEASES

If the **AAA Rating** ceases to exist and there is no alternative rating classification scheme, the **tenant** must:

- (a) at reasonable times throughout the term of any extension thereof redecorate the motel; and
 - ~~(i) redecorate the motel; and~~
 - ~~(ii) paint, repaint, recover, clean or otherwise treat with materials all of the interior and exterior of the building; and~~
- (b) maintain the gardens and landscaping on the **land**. If required in the **landlord's** reasonable opinion, the **tenant** must restore and replace the gardens and landscaping.

7.3 WHAT THE TENANT IS NOT RESPONSIBLE FOR

- (a) Despite the provisions of clauses 7.1 and 7.2, the **tenant** is not responsible for:
 - (i) structural repairs, unless the repair is required because of act or negligence of the **tenant** or the **tenant's agents**; and
 - (ii) fair wear and tear (having regard to the condition of motel at commencement of the lease); and
 - (iii) latent defects;
 - (iv) the replacement of the landlord's property; and
 - (v) termite or pest treatment of the **motel**.
- (b) For the purposes of this clause the landlord's property means any property which comes within a depreciation allowance under the *Income Tax Assessment Act 1997* ("Tax Act") or which is "qualifying expenditure within the meaning of the Tax Act or which is, in the absence of other factors capable of being depreciated or capable of being "qualifying expenditure" under the Tax Act in the accounts of the **landlord**.

*To remove doubt following are examples of the types of items that the **landlord** and the **tenant** will be respectively obliged to replace when the item comes to the end of its life.*

Items the **Landlord** must replace

- ❖ drains;
- ❖ guttering;
- ❖ underground pipes;
- ❖ tiles (either wall, floor or ceiling) where retiling is involved as distinct from replacing sundry broken and cracked tiles;
- ❖ built in cupboards, desks, port racks and cabinets
- ❖ built in vanity units
- ❖ hot water cylinders;
- ~~❖ air conditioning ducting;~~
- ❖ toilet cisterns and pedestals;

- ❖ shower systems excluding shower screens.

Items which the **Tenant** must replace

- ❖ light bulbs and fittings;
- ❖ moveable items (chairs and tables);
- ❖ carpets; and
- ❖ curtains and blinds.

7.4 WHAT THE LANDLORD IS RESPONSIBLE FOR

(a) The **landlord** must:-

- (i) ensure that the **motel** and the **landlord's property** are kept in a good structural state and condition; and
 - (ii) maintain the **motel** and the **landlord's property** where that maintenance is required as a result of:
 - (A) fair wear and tear (having regard to the condition of **motel** at commencement of the lease); and
 - (B) latent defects: and
 - (iii) replace the **landlord's property**;
 - (iv) treat the **motel** for termites and pests.
- (b) For the purposes of this clause the **landlord's property** includes any property which comes within a depreciation allowance under the *Income Tax Assessment Act 1997* ("Tax Act") of which is "qualifying expenditure within the meaning of the Tax Act or which is, in the absence of other factors capable of being depreciated or capable of being "qualifying expenditure" under the Tax Act in the accounts of the **landlord**.

7.5 NOTICE OF DAMAGE

The **tenant** must, immediately on becoming aware, inform the **landlord** in writing of:

- (a) damage to the **motel** and the landlord's property; or
- (b) damage to or the defective operation of the **services**.

7.6 TENANT'S ALTERATIONS

- (a) the **tenant** must not make any additions or alterations to the **motel** without the prior consent of the **landlord**;
- (b) The **tenant** must:
 - (i) provide the **landlord** with plans, specifications and any other information about the proposed work that the **landlord** may reasonably require; and

- (ii) pay the **landlord's** reasonable costs of considering the proposed addition or alteration; and
 - (iii) obtain any necessary approvals or permits from the **competent authority**; and
 - (iv) use materials of the same or similar quality as those used when the **motel** was constructed or last redecorated; and
 - (v) ensure that doing the works, transporting material to and from the **motel** and those works, when completed, do not cause any material interference to the orderly operation of the **motel** or to the efficient operation of the **services**.
- (c) The **tenant** does not have to reinstate those parts of the **motel** on which works are done in accordance with this clause when the **tenant** vacates the **motel**.

8. INSURANCES

8.1 MAINTAIN INSURANCES

The **tenant** must maintain the following insurances:

- (a) public risk insurance for the amount set out in the **particulars**; and
- (b) plate glass insurance for its replacement value; and
- (c) building insurance; and
- (d) **landlord's** loss of profits insurance;
- (e) all other insurance reasonably required in connection with the **motel**; and
- (f) WorkCover.

8.2 REQUIREMENTS FOR INSURANCES

The **tenant** must:

- (a) take out the insurances with reputable insurers; and
- (b) ensure that the insurances (except worker's compensation insurance) are in the names of the **tenant** and the **landlord** and, if asked, any other person for their respective rights and interests; and
- (c) give the **landlord** a copy of the certificates of insurance, if asked; and
- (d) pay each premium by the due date and give the **landlord** a copy of the receipts, if asked; and
- (e) notify the **landlord** if an event occurs which gives rise to a claim under or which could prejudice a policy of insurance or if any policy of insurance is cancelled; and
- (f) pay any increases in premiums incurred by the **landlord** where the increases are caused by the **tenant's** use of the **motel** .

8.3 TENANT NOT TO PREJUDICE

The **tenant** must not:

- (a) do anything which increases the premium payable by the **landlord** for insurance in connection with the **motel** ; or
- (b) do anything which may make the **landlord's** insurances invalid or capable of cancellation; or
- (c) vary, cancel or allow any insurance taken out to lapse, without the **landlord's** consent.

8.4 PROCEEDS OF INSURANCE

The proceeds of insurance policy which are not required by the insurer to be put towards the replacement or reinstatement of the thing insured must be held in a separate account in the names of the **landlord**, the **tenant** and any other person who has an interest in the proceeds, and paid:-

- (a) first, to settle claims arising from or in connection with the event insured against or to replace or reinstate the thing insured; and
- (b) second, in equitable portions (having regard to their respective interests) to the **landlord**, the **tenant** and any other person who has an interest in the proceeds.

8.5 RISK

The **tenant** uses and occupies the **motel** at the **tenant's** own risk.

8.6 INDEMNITY

The **tenant** indemnifies the **landlord** against any liability, loss or damage to the **motel** , and injury to or the death of any person caused by the act, negligence or default of the **tenant** or the **tenant's agents**.

8.7 LANDLORD NOT LIABLE

- (a) the **landlord** is not liable for loss, damage, injury, or death of any person except that caused by the negligence or default of the **landlord** or the **landlord's agents**.
- (b) The **landlord** is not liable for any damage or loss caused by the neglect or default of the **landlord** or the **landlord's agents** (despite any law to the contrary) to do any thing in respect of the **motel** unless the **tenant** has given notice in writing to the **landlord** of such thing and the **landlord** has not rectified such thing within a reasonable time.

8.8 CONTINUING OBLIGATION

Each indemnity in this **lease** is:

- (a) a continuing obligation;
- (b) separate and independent from any other obligations of the **tenant** or **guarantor**;
- (c) will remain in existence after the **end of this lease**.

9. LANDLORD'S OBLIGATIONS

9.1 QUIET ENJOYMENT

The **landlord** must, subject to the **tenant's** compliance with this **lease**;

- (a) **Quiet enjoyment:** allow the **tenant** to occupy the **motel** without interruption or disturbance from the **landlord** or the **landlord's agents**; and
- (b) **Supply of Services;** take reasonable action to ensure that the **services** are made available and continue to the **motel**.

9.2 LANDLORD TO PURCHASE TENANT'S PROPERTY

- (a) At the **end of the lease** the **landlord** must purchase the **tenant's property**.
- (b) The purchase price of the **tenant's property** is to be agreed on by the **landlord** and the **tenant**.
- (c) If the purchase price cannot be agreed then it will be determined by a valuer nominated by the President of the Law Society at the request of the **landlord** or the **tenant**.
- (d) The valuer's decision will be final and is not to be disputed by either party.
- (e) The costs of the valuation must be paid equally by the **landlord** and the **tenant**.
- (f) The valuer must:-
 - (i) be a member of the ~~Australia Institute of Valuers~~[Australian Property Institute](#); and
 - (ii) have a minimum of 5 years experience in valuing property similar to **the tenant's property**; and
 - (iii) value the **tenant's property** on their existing use in situ in the **motel** and as a going concern; and
 - (iv) act as an expert and not an arbitrator.
- (g) The **landlord** must pay the purchase price to the **tenant** within 14 days of the price being agreed or determined by the valuer.
- (h) The **landlord** may deduct the following amounts from the purchase price.
 - (i) any amount payable by the **tenant** under this **lease**; and
 - (ii) all reasonable costs and expenses incurred by the **landlord** as a result of the **tenant's** default.
- (i) The risk and ownership of the **tenant's property** passes to the **landlord** upon payment of the purchase price to the **tenant**.
- (j) The **landlord** must not re-enter the **motel** and use the **tenant's property** until the purchase price has been paid to the **tenant**. This clause does not apply where the **tenant** has vacated or abandoned the **motel**.

10. LANDLORD'S RIGHTS

10.1 ENTRY BY LANDLORD

The **landlord** may:

- (a) enter the **motel** at reasonable times to:
 - (i) see that the **tenant** is complying with this **lease**; and
 - (ii) maintain or repair the **motel** or the **landlord's property**; and
 - (iii) carry out any work to the **motel** that the **tenant** is not obliged to carry out; and
 - (iv) carry out any work to the **motel** that the **tenant** is obliged to carry out but hasn't.
- (b) inspect, and take copies of, all records relating to any **AAA Report** for the **motel**. The production of this **lease** is sufficient authority to permit the **landlord** to make an inspection.

10.2 NOTICE AND DISTURBANCE

- (a) the **landlord** must give the **tenant** reasonable notice of entry to the **motel**, except in the case of an emergency.
- (b) The **landlord** must, in carrying out any works mentioned in Clause 10.1(a), cause as little disturbance as is reasonably possible to the **tenant's business**.

10.3 ANTECEDENT BREACHES

The termination of this **lease** as a result of the **tenant's** default does not prejudice or affect any rights or remedies of the **landlord** against the Tenant on account of any antecedent breach by the **tenant**.

10.4 ENTRY BY LANDLORD ON ABANDONMENT

- (a) If the **tenant** vacates or abandons the **motel** during the **term** there will not be a re-entry, forfeiture or waiver of the **landlord's** rights to recover in full all the rent and other moneys payable under this **lease** if the **landlord** or the **landlord's agents**:
 - (i) accepts the keys; or
 - (ii) enters the **motel** for the purpose of an inspection; or
 - (iii) enters the **motel** for the purpose of showing the **motel** to prospective tenants; or
 - (iv) enters the **motel** for the purpose of advertising the **motel** for re-leasing.
- (b) This **lease** will continue in full force and effect until the date from which a new tenant or licensee actually commences to occupy the **motel**, or the **expiry date**, whichever is the earlier. Any entry by the **landlord** until that date is deemed to be an entry by the licence of the **tenant**.
- (c) This clause does not apply if the **landlord** has:
 - (i) by written notice, accepted the **tenant's** surrender of the **lease**; or
 - (ii) served a formal notice of forfeiture on the **tenant**; or

- (iii) served a formal notice of re-entry on the **tenant**.

11. DEFAULT

11.1 ESSENTIAL TERMS

The essential terms are:-

- (a) Payments (Clauses 3 and 4); and
- (b) use of Premises (Clause 6); and
- (c) Maintenance & Repair (Clause 7); and
- (d) Obtain consent before assignment, subletting, mortgaging or charging (Clause 5); and
- (e) Insurances (Clause 8); and
- (f) Not to remove **tenant's property** on vacating (Clause 13.2)

11.2 DEFAULT

The **tenant** is in default of this **lease** if:

- (a) it breaches an essential term of this **lease**; or
- (b) it fails to pay any money within 7 days of the due date; or
- (c) it repudiates its obligations under this **lease**; or
- (d) an **insolvency event** occurs in respect of the **tenant**; or
- (e) its interest under this **lease** is attached or taken in execution under any legal process; or
- (f) it does not comply with any other term of this **lease** within a reasonable time after receiving notice from the **landlord** to do so; or
- (g) the **motel** is damaged or destroyed and:
 - (i) the damage or destruction was caused or contributed to by the **tenant** or the **tenant's agents**; or
 - (ii) a policy of insurance in connection with the **motel** has been made void or payment of policy money has been refused by the insurer because of an act or omission of the **tenant** or the **tenant's agents**; or
- (h) without the consent of the **landlord**, the **tenant** or a **guarantor** takes action to reduce its capital or passes a resolution referred to in Section 188(2) of the Corporation Law.

11.3 LANDLORD'S RIGHT TO TERMINATE

The **landlord** may, if the **tenant** is in default;

- (a) terminate this **lease** by re-entering the **motel**;
- (b) terminate this **lease** by notice; or
- (c) convert this **lease**, by notice to the **tenant**, into a tenancy which may be terminated by the **landlord** but not the **tenant**. The **tenant** will remain bound under this **lease**.

11.4 INDEMNITY FOR TERMINATION

- (a) If as a result of the **tenant's** default this **lease** is terminated, the **tenant** must indemnify the **landlord** against any liability, loss, costs, charges and expenses incurred:-
 - (i) in connection with re-entering the **motel**; and
 - (ii) because the **landlord** does not receive the benefit of this **lease** from the date of that termination until the **expiry date** (having regard, for example, to the provisions relating to **rent** and **outgoings**); and
 - (iii) In connection with anything else relating to that termination including, but not limited to, in the **landlord** attempting to mitigate its loss.
- (b) The indemnity by the is not affected by:
 - (i) the **landlord** first converting this **lease** into one which may be terminated by the **landlord** only; or
 - (ii) the **landlord** re-entering the **motel** ; or
 - (iii) the **landlord** terminating this **lease**; or
 - (iv) the **landlord** accepting the **tenant's** repudiation; or
 - (v) the **tenant** abandoning or vacating the **motel**; or
 - (vi) the conduct of their party constituting a surrender by operation of law.

12. END OF THE LEASE

12.1 TENANT'S OBLIGATIONS

The **tenant** must at the **end of the lease**:

- (a) Tenant to vacate: vacate the **motel**; and
- (b) Condition of motel: leave the **motel** in the same condition as that required under clause 7.1 and 7.2; and
- (c) Transfer Business Name: transfer the **business name** to the **landlord** or a person nominated by the **landlord**; and
- (d) Keys: give all keys held by the **tenant**, the **tenant's agents**, or any other person to the **landlord**;
- (e) Trading Figures: provide to the **landlord** the full trading figures for the **motel** for the last two years ended 30 June prior to the end of the **lease**.

12.2 REMOVAL OF TENANT'S PROPERTY

The **tenant** must not, at the **end of this lease**, remove the **tenant's property** from the **motel**.

12.3 ABANDONED PROPERTY

If the **tenant** vacates the **motel** before the **end of the lease** the **landlord** may treat the **tenant's property** as abandoned and deal with it in any manner the **landlord** sees fit.

12.4 RISK IN TENANT'S PROPERTY

The **tenant's property** is at the **tenant's** risk at all times unless ownership has passed to the **landlord** in accordance with this **lease**.

13. LIQUOR LICENCE

~~Intentionally deleted.~~

What the Tenant Must Do

The Tenant or the Tenant's Agents must:

- (a) **Hold Liquor Licence:** be the holder of the Liquor Licence; and
- (b) **Comply with Law:** strictly comply, and ensure that all of the Tenant's Agents strictly comply, with the Liquor Act; and
- (c) **Lodge renewals:** do all reasonable things necessary to keep the Liquor Licence current including making applications for renewal, complying with all provisions of the Liquor Act; and
- (d) **Transfer Licence on expiration:** at least 28 days prior to the End of the Lease, immediately execute and give to the Landlord a notice of transfer of the Liquor Licence and do all things necessary to enable the Landlord or any person nominated by the Landlord to obtain a transfer of the Liquor Licence; and
- (e) **Tender Liquor Licence:** at the End of the Lease, immediately hand over the Liquor Licence to the Landlord or the Landlord's nominee; and
- (f) **Notices to Landlord:** forward a copy of all information supplied by the Tenant under the Liquor Act to the Landlord.

What the Tenant Must Not Do

The Tenant and the Tenant's Agents must not:

- (a) **Allow Licence to be Prejudiced:** do anything where the Liquor Licence is or is liable to be cancelled, surrendered or forfeited; and
- (b) **Restriction on transfer:** without prior consent of the Landlord, transfer the Liquor Licence to any other person. If the Landlord consents to an assignment of this Lease under Clause then the Landlord is taken to have consented to the transfer of the Liquor Licence; and
- (c) **No deduction:** if the Motel is located in New South Wales, recover from the Landlord by way of deduction from the Rent or otherwise any part of the licence fees paid by the Tenant for the Liquor Licence. The provisions of section 154 of the Liquor Act do not apply to this Lease.

Inspection by Landlord

The Landlord may inspect and take copies of any information provided by the Tenant to a Competent Authority under the Liquor Act. The production of this Lease is sufficient authority to the Competent Authority to permit the Landlord to make an inspection.

14. DAMAGE DESTRUCTION OR RESUMPTION

14.1 OBLIGATION OF LANDLORD

If the **motel** is destroyed or damaged the **landlord** must, within 2 months after damage, notify the **tenant** of its intentions whether or not to reinstate or repair the **motel**.

- (a) if the **landlord** decides not to reinstate the **motel** then either party can terminate this **lease**, without compensation, by giving 14 days notice to the other party;
- (b) if the **landlord** decides to reinstate the **motel** and such works have not been completed within a reasonable time then the **tenant** may
 - (i) give the **landlord** written notice of an intention to terminate the **lease** if the **motel** is not reinstated within 1 month; and
 - (ii) terminate the **lease** after 1 month has expired.

14.2 NO OBLIGATION TO REINSTATE

This clause does not oblige the **landlord** to reinstate or repair the **motel**.

14.3 ABATEMENT OF RENT

If the **motel** is destroyed or damaged (whether or not including the obstruction of the normal means of access to the **motel**):

- (a) the **tenant** is not obliged to pay **rent** or **outgoings** from the date of the damage until the **motel** has been reinstated; or
- (b) if the **motel** is partially damaged, the **rent** and **outgoings** will be reduced by a proportion equal to the loss of usage of the Motel caused by the damage. This proportion is to be agreed between the **landlord** and the **tenant**.

14.4 NOT TO PREJUDICE

The **tenant** is not entitled to terminate this **lease** or receive a reduction in reply to: and **outgoings** where:

- (a) the damage is caused by, contributed to by or arises from, an act or omission of the **tenant** or the **tenant's agents**.
- (b) a policy of insurance in connection with the **motel** is cancelled or made void because of some act or omission of the **tenant** or of the **tenant's agents**.

14.5 RESUMPTION

If the **motel** is resumed by a **Competent authority** so that it is inaccessible or unusable, either party may terminate this **lease**, without compensation, by giving 1 month's notice to the other party.

15. POWER OF ATTORNEY

- (a) the **tenant**, if in default under this **lease**, appoints the **landlord** and any other person authorised by the **landlord**, jointly and severally to be the attorney of the **tenant**.
- (b) The statutory declaration of the **landlord** or any person duly authorised by the **landlord** is sufficient proof of default.
- (c) The **tenant** must ratify anything lawfully done by the attorney or its delegate if requested by the **landlord**.
- (d) The attorneys may:
 - (i) do anything that the **tenant** may do under this **lease**; and
(for example:
 - Execute deeds;
 - Transferring or surrendering this **lease**;
 - Transferring, surrendering or renewing the **licence**;
 - Transferring the **business name**; and
 - Instituting, conducting and defending legal proceedings.)
 - (ii) delegate its powers (including this power) to any person for any period; and
 - (iii) revoke any delegation; and
 - (iv) exercise its powers even if there is a conflict of duty or a personal interest in the exercise of its powers.)

[Provided always that such powers shall not be exercised unless and until the **lease** shall have been determined by the **landlord** in accordance with the powers of the **landlord** in that behalf herein contained or implied.](#)

16. NOTICES

16.1 VALIDITY

To be valid and effective a notice or document must be

- (a) in writing; and
- (b) served on the **landlord**, **tenant**, or the **guarantor** by:
 - (j) personal delivery; or
 - (ii) posted by registered post to the address in the **particulars** or if a company to its registered office; or
 - (iii) sent by facsimile; or
 - (iv) sent by any other electronic means (example email).

16.2 WHEN RECEIVED

A notice or document is taken to be received:

- (a) if delivered – on the date received by the party to whom the notice or document is addressed;
- (b) if posted – on the date that it would have been delivered in the ordinary course of the post; and
- (c) if facsimiled – on that date on the transmission report that indicates that the facsimile was sent in its entirety to the facsimile number of the recipient; and
- (d) if sent by another form of electronic means – on that date on the transmission report that indicates that the notice or document was sent in its entirety to the recipient.

17. GUARANTEE AND INDEMNITY

17.1 GUARANTEE

- (a) The **guarantor** guarantees the payment of all amounts payable under this **lease** and the performance by the **tenant** of the covenants and provisions contained in this **lease**.
- (b) The **guarantor** must on demand by the **Landlord** if the **tenant** is in default of this **lease** pay, observe and perform the obligations of the **tenant** under this **lease**.

17.2 INDEMNITY

The **guarantor** indemnifies the **landlord** from any loss caused by the default of the **tenant**.

17.3 LIABILITY OF GUARANTOR

The liability of the **guarantor** is not affected by:

- (a) re-entry to the **motel** by the **landlord**; or
- (b) default by the **tenant**; or
- (c) termination of this **lease**; or
- (d) allowing any concession to the **tenant** or to any other person; or
- (e) the death, mental incapacity, bankruptcy, assignment for the benefit of creditors, arrangement with creditors, winding-up, reconstruction, official management, receivership, liquidation, striking off or other demise of the **tenant** or of any **guarantor**; or
- (f) the **landlord** failing or neglecting to exercise or waiving or deferring any or all of its rights or remedies under this **lease**; or
- (g) any lack of capacity or power by the **tenant** to enter into this **lease** or by the **guarantor** to enter into this guarantee; or
- (h) any act or omission on the part of the **landlord** contrary to the interests of the **guarantor**; or

- (i) the obtaining of any judgment against the **tenant** or the **guarantor**; or
- (j) any actual or alleged set-off, defence, counterclaim or other deductions on the part of the **tenant** or the **guarantor**; or
- (k) any variation of the terms of this **lease**; or
- (l) any other event, act, omission, mistake, laches or default of the **landlord** whereby the **guarantor's** liability to the **landlord** would, but for this provision, have been affected or discharged.

17.4 MORE THAN 1 GUARANTOR

If there is more than **guarantor**:

- (a) each **guarantor** is liable individually and together; and
- (b) the liability of one **guarantor** is not affected if the guarantee in this **lease** is void, defective or informal in relation to another **guarantor**.

17.5 ASSIGNMENT

- (a) The **landlord** may, on assignment of its interest in the **motel** , also assign the benefit of the **guarantor's** obligations.
- (b) The **guarantor** must, if requested and at the expense of the **landlord**, enter into a deed with any assignee from the **landlord** in terms substantially similar to those contained in this guarantee and indemnity.

17.6 PRINCIPAL OBLIGATIONS

The obligations of the **guarantor** are principal obligations.

*(To remove any doubt the obligations of the **guarantor** are not affected by any security or right which the **landlord** may hold in relation to any indebtedness of the **tenant**).*

17.7 PROOF

If the **tenant** becomes bankrupt resulting in claims by creditors:

- (a) the **guarantor** must not prove or claim in competition with the **landlord** so as to diminish any distribution which, but for such proof, the **landlord** would be entitled to receive arising out of the bankruptcy.
- (b) the **guarantor** must, if asked by the **landlord**, prove or claim in bankruptcy and any amount received by the **guarantor** from any distribution must be received and held by the **guarantor** in trust for the **landlord**.

17.8 WARRANTY BY GUARANTOR

The **guarantor** warrants that it has full and unrestricted power to covenant, agree and indemnify and to execute this guarantee and indemnity and **lease**.

18. WHERE THE TENANT IS A TRUSTEE

18.1 TENANT'S DECLARATIONS

If the **tenant** is a trustee then the **tenant** declares that:

- (a) it is the sole trustee; and
- (b) it is not in breach of its obligations under the trust; and
- (c) is or has a right to be the legal owner of the trust property; and
- (d) has the power and the authority to enter into this **lease**.

18.2 LIABILITY OF THE TENANT

If the **tenant** is a trustee then the **tenant** is liable under this **lease** both personally and as trustee.

18.3 OBLIGATIONS OF THE TENANT

The **tenant** must, unless it has first obtained the consent of the **landlord**, ensure that:

- (a) the **tenant** remains the sole trustee; and
- (b) the trust is not vested; and
- (c) the trustees right of indemnity against the trust property is not reduced; and
- (d) the trust documents are not varied; and
- (e) there is no delegation of trust powers; and
- (f) the power of appointment is not exercised.

19. DISPUTE RESOLUTION

If either party disputes any matter under this **lease** then the following procedure is to be followed:-

- (a) the party disputing the matter must give a notice to the other party setting out the dispute ("Dispute Notice");
- (b) if the parties cannot subsequently resolve the dispute within 14 days from the Dispute Notice being served, the **landlord** or the **tenant** may ask the President of the Law Society to appoint an independent expert to determine the dispute;
- (c) the decision made by the expert will be final;
- (d) the **landlord** and the **tenant** must share the costs of the expert equally.

20. GOODS AND SERVICES TAX

- (a) In this clause "GST" and "Taxable Supply" refers to goods and services tax under *A New Tax System (Goods and Services Tax) Act 1999* or any other value added tax or similar tax). The terms used in this clause have the meanings referred to in *A New Tax System Goods and Services Tax) Act 1999*.
- (b) The amount of **rent** and other payments specified in this **lease** do not include GST.
- (c) If the **landlord** is or becomes liable to pay GST in respect of a supply for which payment is to be made by the **tenant** under this **lease**, the amount payable by the **tenant** will be increased so that the net amount retained by the **landlord** after payment of that GST is the same as if the **landlord** was not liable to pay any GST in respect of that supply.

IN CONSIDERATION of the Landlord granting the Lease at the request of the persons executing below (being the "Guarantor" named in the Lease) each Guarantor covenants with the Landlord in accordance with the provisions of clause 15 of the Lease.

DATED .

SIGNED SEALED AND DELIVERED by)
 the said DAVID GEORGE HARRIS in the)
 presence of:)

Witness

SIGNED SEALED AND DELIVERED by)
 the said SHARON MERLE HARRIS in the)
 presence of:)

Witness