

Contract for the sale of business — 2015 edition

(a choice printed in BLOCK CAPITALS applies unless a different choice is marked)

<i>Vendor's agent</i> (if more than one, the first named)	River Realty 7 Church Street, Maitland NSW 2320	Ph: (02) 4934 4111 E: chrishenry@riverrealty.com.au Ref: Chris Henry
<i>Vendor</i>	Name	ACN/ARBN 150 006 849 ABN 79 150 006 849
	Address	c/- Jenkins Legal Services Po Box 771, Newcastle NSW 2300
<i>Vendor's</i> <input checked="" type="checkbox"/> SOLICITOR <input type="checkbox"/> conveyancer	Name	Jenkins Legal Services
	Address and DX	PO Box 771, Newcastle NSW 2300 DX 7855, Newcastle
	e-mail address	sam@jenkinslegal.com.au
<i>Purchaser</i>	Name	ACN/ARBN ABN
	Address	
if more than one, as	<input type="checkbox"/> joint tenants <input type="checkbox"/> TENANTS IN COMMON (in equal shares unless otherwise stated)	
<i>Purchaser's</i> <input type="checkbox"/> SOLICITOR <input checked="" type="checkbox"/> conveyancer	Name	Phone
	Address and DX	Fax
	e-mail address:	Ref
<i>Depositholder</i>	Vendor's Agent	Invest <i>deposit</i> <input checked="" type="checkbox"/> NO <input type="checkbox"/> yes (clause 3)
<i>Completion date</i>	35 days from the contract date (clause 19)	
<i>Business name</i>	Bronte House Registered: <input checked="" type="checkbox"/> no <input type="checkbox"/> YES (clause 20)	
<i>Premises</i>	"Bronte House", 145 – 147 Swan St, Morpeth (2/SP74847)	
<i>Contact numbers</i>	(include landline, fax, mobile numbers, e-mail address, domain name being transferred with business): Landline: (02) 4934 6080, website: https://www.thebronte.com.au , Email: stay@thebronte.com.au , Face book, Instagram (clause 20)	
<i>Type of business</i>	Accommodation	
<i>Restraint time</i>	Years (if not stated, no restraint time) (clause 17)	
<i>Restraint distance</i>	Kilometres (if not stated, no restraint distance) (clause 17)	
<i>Training period</i>	Pre-completion: days Post-completion: days (clause 26)	
<i>Trading stock maximum sum</i>	(clause 4)	
<i>Price</i>		
<i>Deposit Balance</i>		
<i>Asset and price apportionment</i>	Business: Inventory: (or as set out in attached apportionment schedule)	
<i>Contract date</i>	(if not stated, the date this contract was made)	

NOTE: Subject to clause 13, the price INCLUDES goods and services tax (if any) payable by the vendor.

Vendor

Purchaser

Witness

Witness

DOCUMENTS (copy of document attached if marked) (some copies are required by *legislation*)

<input type="checkbox"/> profit and loss statement of the <i>business</i>	<input checked="" type="checkbox"/> current lease of <i>premises</i>
<input type="checkbox"/> balance sheet of the <i>business</i>	<input type="checkbox"/> proposed lease of <i>premises</i>
<input type="checkbox"/> schedule setting out asset and price apportionment	<input type="checkbox"/> memorandum setting out lease covenants
<input checked="" type="checkbox"/> inventory of <i>equipment</i>	<input type="checkbox"/> document evidencing a variation of lease
<input type="checkbox"/> depreciation schedule	<input type="checkbox"/> headlease affecting <i>premises</i>
<input type="checkbox"/> list of <i>stock-in-trade</i>	<input type="checkbox"/> property certificate for the land
<input type="checkbox"/> list of <i>work in progress</i>	<input checked="" type="checkbox"/> plan of the land
<input type="checkbox"/> promise, statement or representation made by (or on behalf of) <i>vendor</i> and relied on by <i>purchaser</i>	<input checked="" type="checkbox"/> strata by-laws
<input type="checkbox"/> promise, statement or representation made by (or on behalf of) <i>purchaser</i> and relied on by <i>vendor</i>	<input type="checkbox"/> notice or order affecting the premises
<input type="checkbox"/> licence affecting the <i>business</i>	<input type="checkbox"/> lessor's disclosure statement (<i>Retail Leases Act 1994</i>)
<input type="checkbox"/> notice or order affecting the <i>business</i>	<input type="checkbox"/> lessor's disclosure update (<i>Retail Leases Act 1994</i>)
<input type="checkbox"/> list of continuing agreements (for example, equipment and service agreements)	<input type="checkbox"/> lessee's disclosure statement (<i>Retail Leases Act 1994</i>)
<input type="checkbox"/> equipment and service agreement	<input type="checkbox"/> assignor's disclosure statement (<i>Retail Leases Act 1994</i>)
<input type="checkbox"/> franchise agreement	<input checked="" type="checkbox"/> <i>business name</i> registration certificate
<input type="checkbox"/> franchisor's disclosure statement (<i>Competition and Consumer Act 2010</i>)	<input type="checkbox"/> certificate of registration of trade mark
assignor's disclosure statement (<i>Competition and Consumer Act 2010</i>)	<input type="checkbox"/> certificate of registration of patent
<input type="checkbox"/> development approval	<input type="checkbox"/> certificate of registration of design
<input type="checkbox"/> document evidencing restraint affecting <i>business</i>	<input type="checkbox"/> document evidencing rights to internet domain name
<input type="checkbox"/> list of key persons who will sign the restraint deed	<input type="checkbox"/> document evidencing rights to internet web site
<input type="checkbox"/> list of key persons who will not sign the restraint deed	<input checked="" type="checkbox"/> schedule A - employees
	<input type="checkbox"/> service or other agreement with employee
	<input type="checkbox"/> particulars of <i>superannuation fund</i> for employees of <i>business</i> (name of fund, trustee, members)
	<input type="checkbox"/> transfer of lease

CHOICES

<i>Business</i> sold on a stock inclusive basis	<input checked="" type="checkbox"/> NO	<input type="checkbox"/> yes	if yes, <i>price</i> includes <i>trading stock</i> (clause 4)
<i>Stock-in-trade</i> on consignment	<input checked="" type="checkbox"/> NO	<input type="checkbox"/> yes	(clause 10.1.5)
<i>Special completion address</i>	<input type="checkbox"/> NO	<input checked="" type="checkbox"/> yes	<i>Vendor's solicitor's address</i> (clause 20)
Sale subject to the grant of a new lease	<input type="checkbox"/> NO	<input checked="" type="checkbox"/> yes	(clause 27 and 28)
<i>Landlord's</i> mortgagee's consent required	<input checked="" type="checkbox"/> NO	<input type="checkbox"/> yes	(clause 27)
<i>Landlord's</i> mortgagee's consent obtained	<input checked="" type="checkbox"/> NO	<input type="checkbox"/> yes	(clause 27)
<i>Purchaser</i> must provide a suitable guarantee	<input type="checkbox"/> NO	<input checked="" type="checkbox"/> yes	(clause 27.2.3)
<i>Franchisor's</i> consent required	<input checked="" type="checkbox"/> NO	<input type="checkbox"/> yes	(clause 30)
<i>Franchisor's</i> consent obtained	<input checked="" type="checkbox"/> NO	<input type="checkbox"/> yes	(clause 30)
<i>Purchaser</i> requires audit	<input checked="" type="checkbox"/> NO	<input type="checkbox"/> yes	(clause 8)

GST PROMISES (A New Tax System (Goods and Services Tax) Act 1999) (clause 13)

This sale is a taxable supply (Subdivision 9-A) yes NO

This sale is the supply of a going concern (Subdivision 38-J) YES no

LEASE PARTICULARS

See lease attached.

VENDOR'S ACCOUNTANT - NAME, ADDRESS AND PHONE NUMBER

Gareth West, Doyle Partners
 email gwest@doylepartners.com.au
 tel 02 4929 5400
 Level 6, 19 Bolton St Newcastle NSW 2300
 (or if there is no accountant, details of where books and records of *business* kept)

Signature Page to Contract for Sale of Business – 2015 edition

Vendor **Hunter Valley Boutique Escapes Pty Ltd ACN 150 006 849**

Purchaser

Executed for and on behalf of **Hunter Valley**)
Boutique Escapes Pty Ltd ACN 150)
006 849 in accordance with section 127 of)
the Corporations Act 2001)

.....
Director Signature

.....
Director/Secretary Signature

.....
Director Name: (Please print)

.....
Director/Secretary Name: (Please print)

Executed for and on behalf of)
_____ in)
accordance with section 127 of the)
Corporations Act 2001)

.....
Sole Director/Secretary Signature

.....
Witness Signature

.....
Director Name: (Please print)

.....
Witness Name: (Please print)

Executed by _____ as)
Guarantor in the presence of:)

.....
Witness Signature

.....
Witness Name: (Please print)

Executed by _____ as)
Guarantor in the presence of:)

.....
Witness Signature

.....
Witness Name: (Please print)

WARNINGS

1. Various Acts of Parliament and other matters can affect the rights of the parties to this contract. Some important matters are actions, claims, consents, decisions, licences, notices, orders or proposals involving –

Australian Competition and Consumer Commission	Independent Liquor and Gaming Authority	Owner of adjoining land
Council	IP Australia	Privacy law compliance
Department of Education and Training	Landlord of premises	Roads and Maritime Services
Electricity Authority	Mortgagee of premises	Telecommunications Authority
Environment Protection Authority	NSW Fair Trading	Water, sewerage or drainage authority
Franchising Code of Conduct	Transport for NSW	Workcover Authority

If you think that any of these matters affects the business, tell your solicitor or licensed conveyancer. The parties should consider whether it is appropriate to disclose matters which are material to the business.

2. The sale and purchase of a business can have important taxation consequences. Vendors and purchasers should seek advice before entering into a contract about the tax implications (for example, capital gains tax, income tax, goods and services tax and payroll tax) of the transaction(s).
3. When the parties are negotiating the completion date of this contract, the parties should take into account the time taken to obtain necessary consents (for example, from landlords and mortgagees).
4. The vendor should continue the vendor's insurance until completion. If the vendor wants to give the purchaser possession before completion, the vendor should first ask the insurer to confirm this will not affect the insurance.
5. The purchaser should arrange insurance.
6. If the purchaser intends to re-employ people currently employed in the business, the purchaser may be assuming liabilities relating to the entitlements of those employees.
7. Assets may be affected by the *Personal Property Securities Act 2009* (C'th).
8. The purchaser will usually have to pay duty on this contract. If the purchaser does not pay the duty within 3 months after the date of the making of this contract, the purchaser may incur penalties.

DISPUTES

If you get into a dispute with the other party, the Law Society of NSW and Real Estate Institute of NSW encourage you to use informal procedures such as negotiation, independent expert appraisal or mediation (for example, mediation under the Law Society Mediation Rules).

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The *vendor* sells and the *purchaser* buys the *business* for the *price* under these provisions, subject to any *legislation* that cannot be excluded.

1 Definitions (a term in italics is a defined term)

- 1.1 The business means the business identified on page 1 of the contract and includes the chattels, fittings, fixtures and furniture, goodwill, intellectual and industrial property, licences, permits, plant, quotas and software of the business, together with any other items referred to in this contract as forming part of the business.
- 1.2 In this contract, these terms (in any form) mean –

<i>adjustment date</i>	the earlier of the giving of possession to the <i>purchaser</i> or completion;
<i>bank</i>	the Reserve Bank of Australia or an authorised deposit-taking institution which is a bank, a building society or a credit union;
<i>business</i>	the business described in provision 1.1;
<i>business day</i>	any day except a bank or public holiday throughout NSW or a Saturday or Sunday;
<i>cheque</i>	a cheque that is not postdated or stale;
<i>document of title</i>	document relevant to the title or the passing of title;
<i>employees</i>	the persons whose names and particulars of employment are specified in Schedule A;
<i>employee entitlements</i>	the variable and fixed entitlements of <i>employees</i> of the <i>business</i> , including wages, annual leave, personal/carer's leave, long service leave, superannuation and entitlements under any <i>legislation</i> , statutory agreement, service agreement, or other contract or arrangement;
<i>equipment</i>	the chattels, fittings, furniture, plant and vendor's fixtures forming part of the <i>business</i> ;
<i>FW Act</i>	<i>Fair Work Act 2009</i> (Cth);
<i>GST Act</i>	<i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth);
<i>landlord</i>	the landlord (lessor) of the <i>premises</i> ;
<i>legislation</i>	an Act or a by-law, industrial award or instrument, ordinance, regulation or rule made under an Act;
<i>normally</i>	subject to any other provision of this contract;
<i>party</i>	each of the <i>vendor</i> and the <i>purchaser</i> ;
<i>PPS Act</i>	<i>Personal Property Securities Act 2009</i> (Cth);
<i>requisition</i>	an objection, question or requisition (but the term does not include a claim);
<i>rescind</i>	rescind this contract from the beginning;
<i>serve</i>	serve in writing on the other <i>party</i> ;
<i>settlement cheque</i>	an unendorsed <i>cheque</i> made payable to the person to be paid – <ul style="list-style-type: none"> • issued by a <i>bank</i> and drawn on itself; or • if authorised in writing by the <i>vendor</i> or the <i>vendor's solicitor</i>, some other <i>cheque</i>;
<i>solicitor</i>	in relation to a <i>party</i> , the <i>party's</i> solicitor or licensed conveyancer named in this contract or in a notice served by the <i>party</i> ;
<i>stock-in-trade</i>	goods owned or agreed to be bought by the <i>vendor</i> which are to be sold to third parties (either wholesale or retail) as part of the conduct of the <i>business</i> ;
<i>superannuation fund</i>	a superannuation fund, retirement benefit scheme or other pension scheme or arrangement;
<i>tenant</i>	the tenant (lessee) of the <i>premises</i> ;
<i>terminate</i>	terminate this contract for breach;
<i>terminating employee</i>	an <i>employee</i> who is not a <i>transferring employee</i> ;
<i>trading stock</i>	<i>stock-in-trade</i> or <i>work in progress</i> ;
<i>transferring employee</i>	an <i>employee</i> who prior to completion accepts the <i>purchaser's</i> offer of employment referred to in clause 32.2;
<i>within</i>	in relation to a period, at any time before or during the period;
<i>work in progress</i>	any of the following – <ul style="list-style-type: none"> • goods which are not <i>stock-in-trade</i> but have a process of manufacture, treatment or other application applied to them which adds value to the goods and are then used in the conduct of the <i>business</i>; • benefits under a contract or other agreement for the <i>vendor</i> to provide services to a third party for value in connection with the <i>business</i>; or • anything specified as work in progress in this contract; and
<i>work order</i>	a valid direction, notice or order that requires work to be done or money to be spent on or in relation to the <i>business</i> or arising from the occupation as lessee of the premises or any adjoining footpath or road.

2 Deposit and other payments before completion

- 2.1 The *purchaser* must pay the *deposit* to the *depositholder* as stakeholder.
- 2.2 The *purchaser* must pay the *deposit* on the making of this contract and this time is essential.
- 2.3 If this contract requires the *purchaser* to pay any of the *deposit* by a later time, that time is also essential.
- 2.4 The *purchaser* can pay any of the *deposit* only by unconditionally giving cash (up to \$2,000) or a *cheque* to the *depositholder* or to the *vendor*, *vendor's agent* or *vendor's solicitor* for sending to the *depositholder*.
- 2.5 If any of the *deposit* is not paid on time or a *cheque* for any of the *deposit* is not honoured on presentation, the *vendor* can *terminate*. This right to *terminate* is lost as soon as the *deposit* is paid in full.

3 Investment of deposit

If this contract says that the *deposit* is to be invested, the *depositholder* is to invest the *deposit* (at the risk of the *party* who becomes entitled to it) with a *bank*, in an interest-bearing account in NSW, payable at call, with interest to be reinvested, and pay the interest to the *parties* equally, after deduction of all proper government taxes and bank charges and other charges.

4 Trading stock

- 4.1 The *vendor* sells and the *purchaser* buys the good and saleable *trading stock* of the *business* for the sum agreed on by both *parties* or determined under this clause.
- 4.2 *Normally*, the *purchaser* must pay for the *trading stock* on completion in addition to the *price*.
- 4.3 If this contract states the *business* is sold on a stock inclusive basis, the *price* includes the value of the *trading stock*.
- 4.4 If the value of the *trading stock* is greater than the *trading stock maximum sum*, the *purchaser* does not have to purchase the part of the *trading stock* in excess of the sum, and the *purchaser* can serve a notice identifying the part of the *trading stock* which the *purchaser* wants withdrawn from the sale.
- 4.5 If the *parties* do not agree on the sum payable for *trading stock* or if any other dispute arises about *trading stock* –
- 4.5.1 the dispute must be finalised by a stocktaker appointed by the *parties* or, if an appointment is not made *within* 1 month of completion, by a stocktaker appointed by the President of the Real Estate Institute at the request of a *party*;
- 4.5.2 each *party* must pay half the cost of the appointment and determination of the stocktaker; and
- 4.5.3 a *party* does not have to complete until the date 7 days after the *purchaser* receives written notice of the decision of the stocktaker and clause 25.3 does not apply to this provision.

5 Passing of risk

Until the *adjustment date* the *business* and all its assets are at the risk of the *vendor*.

6 Confidentiality

A *party* must not disclose the terms of this contract or anything connected with or related to this contract unless –

- 6.1 the disclosure is to a financial adviser or lender to that *party*, or to the *landlord*;
- 6.2 the disclosure is required under a court order or *legislation*; or
- 6.3 the other *party* has agreed in writing to the disclosure.

7 Certificates and inspections

The *vendor* must do everything reasonable to enable the *purchaser*, subject to the rights of any *tenant* –

- 7.1 to have the *premises* inspected to obtain any certificate or report reasonably required;
- 7.2 to apply (if necessary, in the name of the *vendor*) for –
- 7.2.1 any certificate that can be given in respect of the *premises* under *legislation*; or
- 7.2.2 a copy of any approval, certificate, consent, direction, notice or order in respect of the *premises* given under *legislation*, even if given after the *contract date*; and
- 7.3 to have any accounting records relating to the *business* inspected.

8 Audit

If this contract says the *purchaser* requires an audit the *purchaser* is entitled to have the records of the *business* audited.

9 How the vendor must conduct the business until completion

- 9.1 It is an essential provision of this contract that the *vendor* must, between the *contract date* and completion –
- 9.1.1 maintain the goodwill of the *business* and carry on the *business* in a proper and business like way;
- 9.1.2 stay in possession of the *business* and the *premises*, ensuring the *business* is run as a going concern;
- 9.1.3 maintain the equipment in the same state of repair as at the *contract date* (except for any fair wear and tear); and

- 9.1.4 comply with the lease of the *premises* and exercise any option to renew the lease of the *premises* which is required under the lease to be exercised before the date of completion.
- 9.2 It is an essential provision of this contract that the *vendor* must not, without the prior written consent of the *purchaser* –
- 9.2.1 offer *stock-in-trade* for sale in any way other than in the usual course of business (for example, by advertising a closing down sale or by selling *stock-in-trade* at less than the prevailing retail price);
- 9.2.2 cancel any existing franchise arrangements, leases (including the lease of the *premises*), licences, services or other similar facilities of the *business* referred to in this contract, or breach any of those facilities in a way which would allow the supplier to cancel the supply contract; or
- 9.2.3 grant or vary any *employee entitlements* (unless required to do so under *legislation* or in accordance with the rules of a *superannuation fund* the existence of which is disclosed in the contract).

10 Vendor's promises

- 10.1 The *vendor* promises that, to the best of the *vendor's* knowledge and other than as disclosed in this contract –
- 10.1.1 the *vendor* has full authority and capacity to enter into this contract and sell the *business*;
- 10.1.2 the *vendor* has absolute title to the *business*;
- 10.1.3 the *business* is not subject to any charge, encumbrance, lease, mortgage, security interest under the *PPS Act* or other liability or security;
- 10.1.4 the *equipment* is in proper working order;
- 10.1.5 the *business* does not include any *stock-in-trade* acquired on terms that property in it does not pass until full payment has been made (for example, *stock-in-trade* acquired on consignment);
- 10.1.6 there is no subsisting breach by the *vendor* of a lease, franchise agreement, or other agreement with a third party which would entitle the lessor, franchisor or third party to terminate the agreement or refuse to grant an option to renew the agreement or refuse to transfer the benefit of the agreement to the *purchaser*;
- 10.1.7 the *vendor* has complied with all requirements under *legislation* relating to the *business*;
- 10.1.8 there is no current dispute or litigation relating to the *business* between the *vendor* and any other person (for example, any lessor, franchisor, supplier of goods or services to the *business*, current or former employee, council or government department);
- 10.1.9 each *superannuation fund* named in this contract –
- is fully funded and solvent; and
 - complies in all other respects with *legislation*;
- 10.1.10 the *vendor* does not have any other *superannuation fund*;
- 10.1.11 there is no superannuation guarantee charge or liability accrued or payable to employees of the *business*;
- 10.1.12 anything attached to this contract is accurate and complete; and
- 10.1.13 there are no workers compensation claims by any employees of the *business* for the past three years.
- 10.2 These promises are made as at the *contract date* and are also made as at completion.
- 10.3 If the *vendor* becomes aware before completion of any fact which makes a promise in clause 10.1 incorrect or misleading, the *vendor* must disclose that fact to the *purchaser* before completion.

11 Foreign Acquisitions and Takeovers Act 1975

- 11.1 The *purchaser* promises that the Commonwealth Treasurer cannot prohibit and has not prohibited the transfer of the *business* to the *purchaser* under the *Foreign Acquisitions and Takeovers Act 1975* (Cth).
- 11.2 This promise is essential and breach of it entitles the *vendor* to *terminate*.

12 Restrictions of rights of purchaser

- The *purchaser* cannot make a claim or *requisition* or rescind or *terminate* in respect of –
- 12.1 a promise, representation or statement about this contract or the *business* not set out or referred to in this contract; or
- 12.2 anything the substance of which is disclosed in this contract.

13 Goods and services tax (GST)

- 13.1 In this clause, input tax credit, registered, supply of a going concern, tax invoice and taxable supply have the same meanings as in the *GST Act*.
- 13.2 *Normally*, if a *party* must pay the *price* or any other amount to the other *party* under this contract, GST is not to be added to the *price* or amount.
- 13.3 If under this contract a *party* must make an adjustment, pay an expense of another party or pay an amount payable by or to a third party (for example under clauses 4 or 18) –
- 13.3.1 the *party* must adjust or pay at that time any GST added to or included in the amount; but

- 13.3.2 if this contract says this sale is a taxable supply, and payment would entitle the *party* to an input tax credit, the adjustment or payment is to be worked out by deducting any input tax credit to which the party receiving the adjustment is or was entitled and adding 10%.
- 13.4 If this contract says this sale is the supply of a going concern –
- 13.4.1 the *parties* agree that the sale of the *business* is a supply of a going concern;
- 13.4.2 *normally*, the *purchaser* promises that, by the *completion date* –
- the *purchaser* will be registered; and
 - the *purchaser* will produce written confirmation from the Australian Taxation Office of registration;
- 13.4.3 if the *purchaser* is not registered by the *completion date*, the *parties* must complete and the *purchaser* must pay on completion, in addition to the *price*, an amount of 10% of the *price* ("the retention sum"). The retention sum is to be held by the *depositholder* and dealt with as follows –
- if *within* 3 months of completion the *purchaser* serves a letter from the Australian Taxation Office stating the *purchaser* is registered, and the registration took effect from the date on or before the time of the supply, the *depositholder* is to pay the retention sum to the *purchaser*; but
 - if the *purchaser* does not serve that letter within 3 months of completion, the *depositholder* is to pay the retention sum to the *vendor*; and
- 13.4.4 if the *vendor*, despite clause 13.4.1, serves a letter from the Australian Taxation Office stating the *vendor* has to pay GST on the *price*, the *purchaser* must pay to the *vendor* on demand the sum of 10% of the *price*.
- 13.5 If this contract says the sale is not a taxable supply, the *purchaser* promises that the *business* will not be conducted and represents that the *purchaser* does not intend the *business* to be conducted in a way that could make the sale a taxable supply.
- 13.6 If this contract says this sale is not a taxable supply, the *purchaser* must pay the *vendor* on completion in addition to the *price* an amount of 10% of the *price* if this sale is a taxable supply because of –
- 13.6.1 a breach of clause 13.5; or
- 13.6.2 something else known to the *purchaser* but not the *vendor*.
- 13.7 If this contract says this sale is a taxable supply, the *vendor* must pay the *purchaser* on completion an amount of one-eleventh of the *price* if this sale is not a taxable supply.
- 13.8 On completion the *vendor* must give the *purchaser* a tax invoice for any taxable supply by the *vendor* by or under this contract.

14 Requisitions

- If the *purchaser* is or becomes entitled to make a *requisition*, the *purchaser* can make it only by *servicing* it –
- 14.1 if it arises out of this contract or it is a general question about the *business* - *within* 10 days after the *contract date*;
- 14.2 if it arises out of anything *served* by the *vendor* - *within* 10 days after the later of the *contract date* and that *service*; and
- 14.3 in any other case - *within* a reasonable time.

15 Rescission by vendor and termination by purchaser

- 15.1 The *vendor* can *rescind* if –
- 15.1.1 the *vendor* is, on reasonable grounds, unable or unwilling to comply with a *requisition*;
- 15.1.2 the *vendor* serves a notice of intention to *rescind* that specifies the *requisition* and those grounds; and
- 15.1.3 the *purchaser* does not serve a notice waiving the *requisition* *within* 10 days after that *service*.
- 15.2 If the *vendor* does not comply with this contract (or a notice under or relating to it) in an essential respect, the *purchaser* can *terminate* by serving a notice. After the *termination* –
- 15.2.1 the *purchaser* can recover the *deposit* and any other money paid by the *purchaser* under this contract;
- 15.2.2 the *purchaser* can sue the *vendor* to recover damages for breach of contract; and
- 15.2.3 if the *purchaser* has been in possession a *party* can claim for a reasonable adjustment.

16 Compliance with work orders

- 16.1 *Normally*, the *vendor* must by completion comply (or cause someone else to comply) with a *work order* made on or before the *contract date* and, if this contract is completed, the *purchaser* must comply with any other *work order*.
- 16.2 If the *purchaser* has to comply with a *work order*, and the cost of compliance is greater than 10% of the *price*, the *purchaser* can *rescind* (but only before completion).
- 16.3 If the *purchaser* complies with a *work order*, and this contract is *rescinded* or *terminated*, the *vendor* must pay the expense of compliance to the *purchaser*.

17 Restriction on vendor's competition

- 17.1 In this clause –

17.1.1 'be involved' includes being involved as a sole trader, partner, joint venturer, manager, agent, appointor, assistant, clerk, director, financier, majority shareholder or person with the capacity to exercise substantial control of a corporation;

17.1.2 'key person' means –

- if the *vendor* is a corporation, an officer of the *vendor*, a majority shareholder of the *vendor*, or a person capable of exercising substantial control over the *vendor*; and
- a person named in this contract as a key person.

17.2 The *vendor* must not, without the prior written consent of the *purchaser* –

17.2.1 be involved in a business which is the same type of business, or a similar type of business;

17.2.2 during the *restraint time*;

17.2.3 within the *restraint distance* (measured radially).

17.3 The *vendor* must not during the *restraint time* engage in any conduct derogating from the *purchaser's* right to obtain the full benefit of the goodwill of the *business*.

17.4 The *vendor* acknowledges that the *restraint time* and the *restraint distance* are no greater than are reasonably required to protect the goodwill sold to the *purchaser*.

17.5 Normally, the *vendor* must cause every key person to sign a deed with the *purchaser* in the same terms as the restraint of trade in this clause and give the deed to the *purchaser* by completion.

17.6 If this contract says a key person will not sign a restraint deed, clause 17.5 does not apply to that person.

18 Adjustments

18.1 The *vendor* is entitled to the profits and takings of the *business* and will be liable for all rent, gas, electricity and telecommunications charges and all other periodic outgoings up to (but not including) the *adjustment date* from which the *purchaser* will be entitled and liable.

18.2 The *parties* must make any necessary adjustment on completion.

18.3 The *vendor* can direct the *purchaser* to produce a *settlement cheque* on completion to pay an amount adjustable under this contract and if so –

18.3.1 the amount is to be treated as if it were paid; and

18.3.2 the *cheque* must be forwarded to the payee immediately after completion (by the *purchaser* if the *cheque* relates only to the *business* or by the *vendor* in any other case).

19 Completion date

19.1 The *parties* must complete by the *completion date* and, if they do not, a *party* can serve a notice to complete if that *party* is otherwise entitled to do so.

19.2 If a consent is required from a franchisor, *landlord* or *landlord's* mortgagee, the *purchaser* does not have to complete earlier than 7 days after *service* of the consent (and if more than one, the last of the required consents) and clause 25.3 does not apply to this provision.

20 Completion

• Vendor

20.1 On completion the *vendor* must give the *purchaser* –

20.1.1 possession of the *business* and the *premises*;

20.1.2 the certificate of registration of each *business name* associated with the *business*, the Australian Securities and Investments Commission notice containing the transfer number and any other information needed to transfer each *business name* to the *purchaser*;

20.1.3 any document evidencing tenure of the *premises*;

20.1.4 any other document needed to effect registration of the *business* under *legislation*; and

20.1.5 any other *document of title* that relates only to the *business*.

20.2 If on completion the *vendor* has possession or control of a *document of title* that relates also to property other than the *business*, the *vendor* must produce it as and where necessary.

20.3 On completion the *vendor* must –

20.3.1 sign all necessary forms and make all necessary applications to –

- allow the *contact numbers* to be transferred to the *purchaser*; and
- make all other services to the *business* and the *premises* available to the *purchaser* (subject to the consent of the suppliers of the services); and

20.3.2 cause the legal title to the *business* to pass to the *purchaser* (subject to any necessary registration), free of any mortgage or other interest.

20.4 By completion, the *vendor* must serve –

20.4.1 the consent of any mortgagee or head lessor of the land to the transfer or grant of the lease of the *premises*; and

20.4.2 the consent of any franchisor to the sale of the *business*.

• Purchaser

20.5 On completion the *purchaser* must –

- 20.5.1 pay to the *vendor*, by cash (up to \$2,000) or *settlement cheque*, the *price* (less any *deposit* paid) and any other amount payable by the *purchaser* under this contract (less any amount payable by the *vendor* to the *purchaser* under this contract); and
- 20.5.2 take over the burden and benefit of the continuing agreements listed in this contract and indemnify the *vendor* against any liability under those agreements arising after completion.
- 20.6 If the *vendor* requires more than 5 *settlement cheques*, the *vendor* must pay \$10 for each extra *cheque*.
- 20.7 On completion the *purchaser* must give the *vendor* an order signed by the *purchaser* authorising the *depositholder* to account to the *vendor* for the *deposit*.
- 20.8 On completion the *deposit* belongs to the *vendor*.
- Place for completion**
- 20.9 *Normally*, the *parties* must complete at the completion address, which is –
- 20.9.1 if a special completion address is stated in this contract - that address; or
- 20.9.2 in any other case - the *vendor's solicitor's* address stated in this contract.
- 20.10 The *vendor* by reasonable notice can require completion at another place, if it is in NSW, but the *vendor* must pay the *purchaser's* additional expenses, including any agency or mortgagee fee.
- 20.11 If the *purchaser* requests completion at a place that is not the completion address, and the *vendor* agrees, the *purchaser* must pay the *vendor's* additional expenses, including any agency or mortgagee fee.
- 21 Book debts**
- 21.1 The *vendor* is entitled to payment of all debts of the *business* owing to the *vendor* at completion.
- 21.2 The *purchaser* must promptly account to the *vendor* for payment of those debts received after completion.
- 22 Purchaser's default**
- If the *purchaser* does not comply with this contract (or a notice under or relating to it) in an essential respect, the *vendor* can *terminate* by serving a notice and after the *termination* –
- 22.1 keep or recover the *deposit* (to a maximum of 10% of the *price*);
- 22.2 hold any other money paid by the *purchaser* under this contract as security for anything recoverable under this clause –
- 22.2.1 for 12 months after the *termination*; or
- 22.2.2 if the *vendor* commences proceedings under this clause *within* 12 months, until those proceedings are concluded; and
- 22.3 sue the *purchaser* either –
- 22.3.1 where the *vendor* has resold the *business* under a contract made *within* 12 months after the *termination*, to recover –
- the deficiency on resale (with credit for any of the *deposit* kept or recovered and after allowance for any capital gains tax and GST payable on anything recovered under this clause); and
 - the reasonable costs and expenses arising out of the *purchaser's* non-compliance with this contract or the notice and of resale and any attempted resale; or
- 22.3.2 to recover damages for breach of contract.
- 23 Rescission of contract**
- 23.1 If this contract expressly gives a *party* a right to *rescind*, the *party* can exercise the right –
- 23.1.1 only by *serving* a notice before completion; and
- 23.1.2 in spite of any making of a claim or *requisition*, any attempt to satisfy a claim or *requisition*, any arbitration, litigation, mediation or negotiation or any giving or taking of possession.
- 23.2 *Normally*, if a *party* exercises a right to *rescind* expressly given by this contract or any *legislation* –
- 23.2.1 the *deposit* and any other money paid by the *purchaser* under this contract must be refunded;
- 23.2.2 a *party* can claim for a reasonable adjustment if the *purchaser* has been in possession;
- 23.2.3 a *party* can claim for damages, costs or expenses arising out of a breach of this contract; and
- 23.2.4 a *party* will not otherwise be liable to pay the other *party* any damages, costs or expenses.
- 24 Miscellaneous**
- 24.1 The *parties* acknowledge that anything stated in this contract to be attached was attached to this contract by the *vendor* before the *purchaser* signed it and is part of this contract.
- 24.2 If a *party* consists of 2 or more persons, this contract benefits and binds them separately and together.
- 24.3 A *party's solicitor* can receive any amount payable to the *party* under this contract or direct in writing that it is to be paid to another person.
- 24.4 A document under or relating to this contract is –
- 24.4.1 signed by a *party* if it is signed by the *party* or the *party's solicitor*;
- 24.4.2 *served* if it is served by the *party* or the *party's solicitor*;
- 24.4.3 *served* if it is served on the *party's solicitor*, even if the *party* has died or any of them has died;
- 24.4.4 *served* if it is *served* in any manner provided in s170 of the *Conveyancing Act 1919*;
- 24.4.5 *served* if it is sent by fax to the *party's solicitor*, unless it is not received;
- 24.4.6 *served* on a person if it (or a copy of it) comes into the possession of the person;

24.4.7 *served* at the earliest time it is served, if it is served more than once; and

24.4.8 *not served* if it is sent only by e-mail.

24.5 An obligation to pay an expense of another *party* of doing something is an obligation to pay –

24.5.1 if the *party* does the thing personally - the reasonable cost of getting someone else to do it;

24.5.2 if the *party* pays someone else to do the thing - the amount paid, to the extent it is reasonable.

24.6 Rights under clauses 10, 13, 16, 18 and 35 continue after completion, whether or not other rights continue.

24.7 A reference to any *legislation* includes a reference to any corresponding later legislation.

25 Time limits in these provisions

25.1 If the time for something to be done or to happen is not stated in these provisions, it is a reasonable time.

25.2 If there are conflicting times for something to be done or to happen, the latest of those times applies.

25.3 The time for one thing to be done or to happen does not extend the time for another thing to be done or to happen.

25.4 If the time for something to be done or to happen is the 29th, 30th or 31st day of a month, and the day does not exist, the time is instead the last day of the month.

25.5 If the time for something to be done or to happen is a day that is not a *business day*, the time is extended to the next *business day*, except in the case of clause 2.

25.6 *Normally*, the time by which something must be done is fixed but not essential.

26 Training before and after completion

26.1 This clause applies only if a *training period* is specified in this contract.

26.2 The *purchaser* (or the *purchaser's* nominee) can attend the *premises* after the *contract date* and before completion for up to the number of working days specified as the pre-completion *training period* to watch the way the *business* is conducted and to receive training in the *business*.

26.3 Attending the *premises* under clause 26.2 does not of itself imply that the *vendor* has given possession to the *purchaser*.

26.4 The *vendor* (or a nominee of the *vendor* familiar with the *business*) must attend the *premises* after completion for the number of working days specified as the post-completion *training period* to train the *purchaser* in the running of the *business* and to introduce to the *purchaser* the clients, customers and suppliers of the *business*.

26.5 The *party* attending the *premises* must do so –

26.5.1 at the expense of that *party*; and

26.5.2 during normal operating hours or at such other times as are agreed.

27 Lease of premises – general provisions

27.1 This clause applies only if the *premises* are, or are on completion to be, subject to a lease.

27.2 The *purchaser* must –

27.2.1 supply references and other information reasonably required by the *landlord* to allow the *landlord* to consider the application;

27.2.2 pay or bear the costs and expenses of the *landlord* (including the costs of a *landlord's* mortgagee) arising from any negotiations between the *landlord* and the *purchaser* for proposed changes to a lease disclosed in this contract, whether or not this contract is completed; and

27.2.3 if this contract says the *purchaser* must provide a suitable guarantee, provide any guarantee reasonably required by the *landlord* to support performance of the obligations of the *tenant* under the lease.

27.3 The *vendor* must –

27.3.1 apply to the *landlord* for the consent of the *landlord* to the *purchaser* becoming the *tenant*; and

27.3.2 pay or bear the costs and expenses of the *landlord* arising under this contract, apart from those payable under clause 27.2 (including the costs of a *landlord's* mortgagee), whether or not this contract is completed.

27.4 If the consent of the *landlord's* mortgagee is required, and the *landlord's* mortgagee does not consent by the *completion date*, a *party* can *rescind*, but only if the *party* has complied with this clause.

27.5 A *party* cannot *rescind* under clause 27.4 after the other *party* has *served* notice of the consent of the *landlord's* mortgagee.

28 Grant of new lease

28.1 This clause applies only if this contract says the sale is subject to the grant of a new lease.

28.2 The *parties* intend that the *landlord* is to grant to the *purchaser* a lease of the *premises* –

28.2.1 in the form of the proposed lease of *premises* attached to the contract; or

28.2.2 if no proposed lease is attached to the contract, with the lease particulars as set out in this contract, and on other terms substantially similar to those in force between the *landlord* and the *vendor*.

28.3 If the *landlord* does not grant a lease in accordance with this clause –

28.3.1 by the *completion date*, the *purchaser* can *rescind*; or

28.3.2 by the 90th day after the *contract date*, a *party* can *rescind*.

- 28.4 A *party* cannot *rescind* under clause 28.3 after the *landlord* has granted a lease in accordance with this clause.
- 29 Transfer of existing lease**
- 29.1 This clause applies only if –
- 29.1.1 the *premises* are subject to a lease; and
- 29.1.2 this contract does not say the sale is subject to the grant of a new lease.
- 29.2 The *parties* intend that the *landlord* is to consent to a transfer of the lease from the *vendor* to the *purchaser*.
- 29.3 The *purchaser* must *serve* the form of transfer at least 7 days before the *completion date*.
- 29.4 If the *landlord* does not consent to the transfer of the lease –
- 29.4.1 by the *completion date*, the *purchaser* can *rescind*; or
- 29.4.2 by the 90th day after the *contract date*, a *party* can *rescind*.
- 29.5 A *party* cannot *rescind* under clause 29.4 after the other *party* has *served* notice of the consent of the *landlord*.
- 30 Consent to transfer of franchise**
- 30.1 This clause applies only if the *vendor* conducts the *business* as a franchisee.
- 30.2 The *vendor* must –
- 30.2.1 apply to the franchisor for the consent of the franchisor to a transfer of the franchise to the *purchaser*; and
- 30.2.2 pay or bear the costs and expenses of the franchisor arising under this contract whether or not this contract is completed.
- 30.3 The *purchaser* must –
- 30.3.1 supply references and other information reasonably required by the franchisor to allow the franchisor to consider the application; and
- 30.3.2 comply with any other requirement imposed by the franchise agreement or under *legislation*.
- 30.4 The *purchaser* promises that, if the franchisor consents to the transfer of the franchise to the *purchaser*, the *purchaser* will comply with the obligations of the franchisee under the franchise agreement.
- 30.5 If the franchisor does not consent to the transfer of the franchise to the *purchaser* *within* 42 days of the *contract date*, a *party* can *rescind*, but only if the *party* has complied with this clause.
- 30.6 A *party* cannot *rescind* under clause 30.5 after the other *party* has *served* notice of the consent of the franchisor.
- 31 Employees – notices**
- 31.1 Unless otherwise agreed with the *purchaser* in writing, the *vendor* must give written notice terminating the employment of each *employee* on and from completion.
- 31.2 The notice period is the greater of:
- 31.2.1 14 days;
- 31.2.2 a period specified in the *FW Act*; or
- 31.2.3 a period specified in the *employee's* contract of employment.
- 32 Proposed transfer of employees**
- 32.1 The *purchaser* must at least 15 *business days* prior to completion notify the *vendor* of the names of the *employees* to whom the *purchaser* wishes to offer employment in the *business* after completion and the election made in accordance with clause 34.2.
- 32.2 The *purchaser* must promptly offer those *employees* (the '*prospective transferring employees*') employment in the *business* with the *purchaser* from and conditional on completion. The offer must –
- 32.2.1 be in writing; and
- 32.2.2 be on terms which accord with the transferable instrument (for example, award, enterprise agreement or other relevant statutory instrument, agreement, arrangement or contract of employment) which applies to the prospective *transferring employees*;
- 32.2.3 subject to clause 34, be on terms and conditions no less favourable to the prospective *transferring employees* than their terms and conditions of employment with the *vendor* as at the *contract date*; and
- 32.2.4 unequivocally state –
- whether the *purchaser* will or will not recognise service with the *vendor* (see clause 34); and
 - that employment with the *vendor* will terminate, and employment with the *purchaser* will simultaneously commence, on completion.
- 33 Employee entitlements – terminating employees**
- Normally*, the *vendor* is responsible for the *employee entitlements* of the *terminating employees* and on completion must pay to each *terminating employee* the *employee entitlements* (if any) due to each *terminating employee*, whether arising under any contract, any *legislation*, transferable instrument or otherwise, including in respect of –

- 33.1 accrued salary, wages and annual leave;
 33.2 accrued entitlements to long service leave;
 33.3 any entitlements to a payment in lieu of notice;
 33.4 any entitlements to redundancy pay; and
 33.5 any other remuneration or entitlement arising out of employment or termination of employment;
 and the *vendor* must indemnify the *purchaser* against any loss or claim against the *purchaser* in respect of the *terminating employees* to the extent that the loss or claim relates to the period prior to completion.

34 Employee entitlements – transferring employees

- 34.1 The *vendor* must deliver to the *purchaser* on completion a document setting out full details of –
 34.1.1 the *employee entitlements* in respect of each *transferring employee* as at the date of completion;
 34.1.2 details of any *employee entitlements* which the *transferring employee* was either paid upon the termination of his or her employment with the *business* or to which the *transferring employee* is entitled; and
 34.1.3 details of provisioning in the *vendor's* accounts for long service leave in respect of each of the *transferring employees*.
- 34.2 The *purchaser* must elect whether or not the *purchaser* recognises service with the *vendor* for the purposes of the *FW Act*, and in doing so calculate the period of employment in accordance with Division 2 of Part 3-2 of the *FW Act* (which deals with access to unfair dismissal), Division 6 of Part 2-2 of the *FW Act* (which deals with annual leave) and subdivision B of Division 11 of Part 2-2 of the *FW Act* (which deals with redundancy pay).
- 34.3 If the *purchaser* elects to recognise service –
 34.3.1 the *vendor* must make the payments set out in clause 33 except for an entitlement which is adjusted in accordance with this clause; and
 34.3.2 the *vendor* must pay or allow the *purchaser* on completion –
 • an amount equal to 70% of the value of the accrued annual leave for *transferring employees* as at completion (but only if service with the *vendor* counts as service with the *purchaser* for this purpose);
 • an amount equal to 3.5% of the value of redundancy pay for *transferring employees* as if the *transferring employees* had been paid redundancy pay on completion; and
 • an amount equal to 70% of the value of accrued personal/carer's leave for *transferring employees*.
- 34.4 If the *purchaser* makes an election not to recognise service in any circumstance, the *vendor* must make the payments set out in clause 33 in relation to that circumstance.
- 34.5 If the *purchaser* does not make an election, the *purchaser* is taken to have elected not to recognise service in any circumstance and the *vendor* must then make all the payments set out in clause 33.
- 34.6 The *purchaser* must pay to the *vendor* at completion an amount equal to the total amount of wages and salaries paid by the *vendor* to the *transferring employees* in respect of any period after completion.
- 34.7 In any event, the *vendor* must pay or allow the *purchaser* on completion an amount equal to the nominal accrued long service leave calculated in accordance with clause 34.8 in respect of those *transferring employees* who have at completion completed 5 years in the business.
- 34.8 The nominal accrued long service leave amount is the value of any long service entitlement of each *transferring employee*, varied by multiplying that value by the figure shown in column 2 of the Long Service Leave Adjustment Table which corresponds to the length of continuous service shown in column 1 of the Long Service Leave Adjustment Table.

Long Service Leave Adjustment Table	
Column 1	Column 2
Length of continuous service	Adjustment Multiplier
Less than 5 years	0%
At least 5 years but less than 6 years	20%
At least 6 years but less than 7 years	30%
At least 7 years but less than 8 years	40%
At least 8 years but less than 9 years	50%
At least 9 years but less than 10 years	60%
At least 10 years	70%

35 Release of perfected security interest

- 35.1 This clause applies if any personal property forms part of the *business* or is *trading stock* and in either case is subject to a perfected security interest under the *PPS Act*.
- 35.2 Words and phrases used in this clause which are defined in the *PPS Act* have the same meaning in this clause.

- 35.3 The *vendor* must do everything reasonable to enable the *purchaser* to ascertain whether there are any security interests in any personal property forming part of the *business* or *trading stock*.
- 35.4 *Normally*, the *vendor* must ensure that at or before completion, in respect of each item of personal property to which clause 35.1 applies, the *purchaser* receives:
- 35.4.1 one of the following documents –
- a release (the 'PPS release') from each secured party releasing the security interest in respect of the property; or
 - a statement in accordance with section 275(1)(b) of the *PPS Act* setting out that the amount or obligation that is secured is nil at completion; or
 - an approval or correction in accordance with section 275(1)(c) of the *PPS Act* indicating that, on completion, the personal property included in the contract is not or will not be property in which the security interest is granted if the security interest is to remain perfected despite completion; and
- 35.4.2 in the case of serial numbered goods a written undertaking from each secured party to register a financing change statement which reflects that document;
and the *purchaser* does not have to complete until the *vendor* has complied with this clause 35.4.
- 35.5 The *vendor* does not have to comply with clause 35.4 in respect of a particular item of personal property to which clause 35.1 applies, if in respect of that item, the contract discloses a security interest and specifically states that clause 35.4 does not apply to that security interest.
- 35.6 *Normally*, the *purchaser* must accept a PPS release that is in a form published by the Australian Bankers' Association, the Law Society of NSW or the Law Council of Australia.
- 35.7 If the *vendor* proposes to give the *purchaser* another form of PPS release the *purchaser* must accept that form unless it is unreasonable to do so.
- 35.8 A *party* must provide a copy of any document mentioned in this clause to the other *party* on request.

SPECIAL CONDITIONS

These are the special conditions to the contract for the sale of business

BETWEEN: Hunter Valley Boutique Escapes Pty Ltd ACN 150 006 849 (Vendor)

AND: (Purchaser)

36. Interpretation

36.1. In these Special Conditions unless the context requires otherwise terms have the same meanings as set out in the printed conditions of this contract and references to those clauses are references to the clauses of the printed conditions of this contract. If there are any inconsistencies between these Special Conditions and the printed standard form terms of this contract, these Special Conditions will prevail to the extent of any inconsistency.

36.2. The following words have these meanings in this contract unless the contrary intention appears:

'Completion' means completion of the sale and purchase of the Business under this Contract;

'Completion date' means the date shown on the front page of the Contract or such later date agreed by the parties in writing;

'Contract' means the standard Law Society 2015 Edition Contract for Sale of Business together with these special conditions and all annexure, schedules and attachments to this Contract.

'Excluded Assets' means cash (at bank, on deposit or at hand), insurance policies owned by the Vendor and the benefit of any claims under them, book debts, any third party equipment (noted in the Inventory), any other items listed in Annexure C and the lessor's fixtures and improvements.

'Guarantor' means each person who is a director of the Purchaser as at the date of this Contract and signs this Contract on behalf of the Purchaser, such signature being confirmation that the signatory accepts the provisions of clause 60.

'Guarantee' means the guarantee and indemnity in clauses 60.3 and 60.7.

'Guaranteed Money' means all amounts which at any time for any reason or circumstance are payable, are owing but not currently payable, are contingently owing or remain unpaid (or which are reasonably foreseeable and likely, after that time, to fall within any of those categories), by the Purchaser to the Vendor in connection with this Contract or any transaction contemplated by it, whether at law, in equity, under statute or otherwise.

'Guaranteed Obligations' means all express or implied obligations of the Purchaser to the Vendor in connection with this Contract or any transaction contemplated by it.

'Law' means any statute, regulation, ordinance, by-law or statutory notice, direction or requirement.

'Purchaser' means the Purchaser named herein and their successors and assigns.

'Vendor' means the Vendor named herein and their successors and assigns.

36.3. In this Contract unless the context requires others:

(a) Words importing the singular number include the plural and vice versa and the masculine gender includes the feminine and neuter or vice versa and words importing persons include corporations and vice versa;

(b) If the Vendor **'may'** do something means that the Vendor may, but is not obliged, to do the thing or take the action contemplated in the relevant clause;

(c) if the Vendor has an obligation to cause something to be done, the Vendor may

either

- (i) do that thing itself; or
- (ii) engage a third person to do that thing;
- (d) the singular includes the plural and vice versa;
- (e) headings are used for convenience only and do not affect the interpretation of this Contract;
- (f) a reference to a **document** (including this Contract) includes the document as modified from time to time and any document replacing it;
- (g) a reference to a **statute, ordinance, code or other law** includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements or any of them;
- (h) an agreement, representation or warranty in favour of 2 or more persons is for the benefit of them jointly and severally;
- (i) an agreement, representation or warranty on the part of 2 or more persons binds them jointly and severally;
- (j) the word "**person**" includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association or any authority;
- (k) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including without limitation, persons taking by novation) and assigns;
- (l) a reference to any agency, authority or body, if that agency or body ceases to exist or is constituted, renamed or replaced or has its powers or functions removed (**defunct body**), means the agency or body which performs most closely the functions of the defunct body;
- (m) a reference to a **day** is a reference to a period of time commencing at midnight and ending 24 hours later;
- (n) a reference to **time** is a reference to eastern standard time;
- (o) **month** means calendar month and **year** means 12 months;
- (p) if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (q) **in writing** includes any communication sent by letter, facsimile transmission or email;
- (r) **including** and similar expressions are not words of limitation; and
- (s) money amounts are stated in Australian currency unless otherwise specified.

37. Amendments to the Contract for Sale of Business 2015 Editions

- 37.1. At the end of clause 1.1, after the word "*business*", insert the words "*, but excluding the Excluded Assets*".
- 37.2. Insert a new clause 26.6, as follows:
- "26.6 The Purchaser attends the premises under this clause at its own risk and releases and indemnifies the Vendor and the Vendor's employees from and against any claim, liability or loss arising out of in connection with such attendance."*
- 37.3. At clause 29.4.2, after the word "*date*" insert the words, "*or such other date as the parties agree in writing*".
- 37.4. At clause 34.3.2, delete the words "*an amount equal to 3.5% of the value of redundancy pay for transferring employees as if the transferring employees had been paid redundancy pay on completion*".
- 37.5. At clause 35.4.1, insert a new bullet point as follows:
- "– evidence that the secured party or supplier has been paid such as invoices for the relevant stock affected and evidence of payment of those invoices; or"*

38. Incapacity

Without affecting any of the Vendor's other rights or remedies, if the Purchaser:-

38.1. Is an individual and dies or becomes mentally ill or incapable of managing his own affairs, the Vendor or Purchaser may rescind this Contract; or

38.2. Is a Company and:

- (a) resolves to go into liquidation;
- (b) a petition for its winding up is presented and not withdrawn within 30 days after presentation;
- (c) enters into any scheme of arrangement with its creditors;
- (d) a Liquidator, Provisional Liquidator, Trustee, Receiver, Receiver and Manager, Administrator or similar official is appointed over its assets or undertakings; or
- (e) The Purchaser is regarded as not having complied with this Contract in an essential respect,

the Vendor can rescind the Contract and the terms of clause 23 will apply.

39. Conditions

39.1. Conditions precedent to Completion

- (a) Completion is subject to and conditional upon each of the following conditions being fulfilled (or waived under clause 39.3):
 - (i) the parties entering into a Contract for Sale of Land for the property "Bronte House", being 145 – 147 Swan Street, Morpeth NSW 2321, being Folio Identifier Lot 2 in SP 74847 on or before the date of this Contract; and
 - (ii) completion of the Contract for Sale of Land entered into by the parties for the property "Bronte House", being 145 – 147 Swan Street, Morpeth NSW 2321, being Folio Identifier Lot 2 in SP 74847 on or before the date for completion.
- (b) The Purchaser may not make a Claim or requisition, delay completion, rescind or terminate because of anything in connection with any matter referred to in this clause 39.

39.2. Effect of non-fulfilment

If the conditions referred to in clause 39.1 are not fulfilled (or not waived under clause 39.3) on or before the date for the conditions to be satisfied, then either party may rescind this Contract and the terms of clause 23 of the Contract will apply. Notwithstanding any other term of this Contract, the parties agree that a rescission of this Contract does not preclude the enforcement of any right or claim for breach which has arisen before this Contract comes to an end.

39.3. Fulfilment by waiver

A condition referred to in clause 39.1 may only be waived by the written agreement of both parties, expressly waiving the condition.

39.4. Obligation to satisfy conditions

The parties must use their respective reasonable endeavours to ensure that the conditions referred to in clause 39.1 are fulfilled on or before the Condition Satisfaction Date.

39.5. Extent of obligation to fulfil conditions

The obligation imposed on a party by clause 39.4 does not require that party to waive any condition under clause 39.3.

40. Interest for late completion

40.1. If the Vendor is able to complete this Contract and if through no fault of the Vendor, the Purchaser does not complete this Contract in accordance with this Contract then and without prejudice to all or any other remedies of the Vendor including but not limited to the service of a notice to complete pursuant to clause 15 and 50 the Purchaser will pay to the Vendor (in addition to other monies payable to the Vendor on Completion) an amount 'X' calculated in accordance with the following formula:

$$X = \underline{D \times B \times 10\%}$$

where **D** is the number of days from the Completion date to the actual date of Completion, including the Completion date less the number of days during that period on which the Vendor is unable to complete this Contract.

where **Y** is number of days in the year that this Contract is completed

where **B** is balance of the price and any other amounts payable in accordance with this contract, including (but not limited to) the value of any Inventory.

- 40.2. The parties agree that this amount is a genuine estimate of the Vendor's damages for the Purchaser failing to complete in accordance with the Contract. It is further agreed that payment of such amount is an essential term of this Contract.

41. Vendor Disclosure

- 41.1. The Purchaser acknowledges that all matters disclosed or described in this Contract are specifically disclosed and clearly described.
- 41.2. The Vendor does not warrant the accuracy or completeness of the matters set out in the documents attached to this Contract.
- 41.3. The Purchaser warrants that it is relying entirely on its own enquiries in relation to the documents attached to this Contract.
- 41.4. The Purchaser cannot make any claim or requisition, rescind or terminate or delay completion because:
- (a) of any matter disclosed or described in this Contract; or
 - (b) any document attached to this Contract is incomplete or inaccurate.

42. Purchaser warranties

- 42.1. The Purchaser represents, warrants and acknowledges that:
- (a) it was not induced to enter into this contract and did not rely on any representations made by the Vendor, the Vendor's agent or any other person on behalf of the Vendor or warranties about the subject matter of this contract (including, without limitation, representations or warranties about the nature or the viability of the business or about any financial income or return to be derived from the business or anything in an advertisement or sales brochure or report) except those representations and warranties set out in this contract;
 - (b) it has made and relied entirely on its own enquiries relating to the premises and the business prior to entering into this contract and has satisfied itself as to:
 - (i) its obligations and rights under this contract;
 - (ii) the viability, profitability, condition, state of, or suitability of the business for any purpose;
 - (iii) the value and current and future return on the business;
 - (iv) rights and privileges relating to the premises and business;
 - (v) the existence of any requirements of any government authority or agency relating to the premises and the business;
 - (vi) the zoning and planning restrictions (including all planning approvals, licence conditions, permits and consents) in respect of the premises and business;
 - (vii) the use of the premises and all applicable consents required to conduct the business; and
 - (viii) all of the material relating to the business which was made available by or on behalf of the Vendor;
 and the Vendor makes no representations or warranties in this regard;
 - (c) it has inspected all documentation attached to the contract and is aware of all of the terms of, and restrictions and prohibitions contained in, this contract and has had the opportunity to obtain legal, financial and taxation advice in relation to same;

- (d) it has full power, authority, capacity and sufficient resources to enter into this contract to perform its obligations and to complete; and
- (e) this contract constitutes a legal, valid and binding obligation on the Purchaser enforceable in accordance with its terms by appropriate legal remedy.

42.2. this clause does not merge on completion.

43. Agent

The Purchaser warrants that the Purchaser was not introduced to the Vendor or the property by any real estate agent except the Vendor's agent (if any) named in this Contract, and the Purchaser hereby indemnifies the Vendor against any claim for commission which may be made by an agent resulting from any such introduction in breach of this warranty.

44. Inclusions

- 44.1. This Contract excludes the Excluded Assets and the Lessor's property, incorporating all fixtures and improvements owned by the Lessor.
- 44.2. The purchaser agrees to purchase the Inventory for the price of \$104,017.00, which will be paid on the date of Completion. Purchase of the Inventory on the date for completion is an essential term of this Contract.
- 44.3. The Purchaser takes the Inventory in its present condition and state of repair.
- 44.4. The Purchaser acknowledges that the Purchaser will not require the Vendor to remove any item of plant or equipment or any fittings or fixtures or other item of property from the land, nor alter in anyway the improvements erected on the land.
- 44.5. The Purchaser cannot make any claim or requisition, rescind or terminate or delay completion because of the lack of approval or because of anything in relation to this clause.

45. INTENTIONALLY DELETED.

46. Interdependent Contracts

- 46.1. This Contract is interdependent with the Contract for Sale of Land entered into by the parties' related entities for the purchase and sale of the property of "Bronte House", being 145 – 147 Swan Street, Morpeth NSW 2321, being Folio Identifier Lot 2 in SP 74847 ("**Contract for Sale of Land**") on or before the date of this Contract.
- 46.2. A breach of the Contract for Sale of Land by either party will be a breach of this Contract.
- 46.3. If the Contract for Sale of Land is rescinded or terminated, either party may exercise a corresponding right to either rescind or terminate this Contract, as the case may be, by giving written notice to the other.
- 46.4. The parties acknowledge that Completion of this Contract and the Contract for Sale of Land is to occur on the same date.
- 46.5. This clause 46 is an essential term of this Contract.

47. Business

The parties agree and acknowledge that the Business includes the goodwill and that the Inventory represents all plant, fittings and chattels used by the Vendor in connection therewith, which are sold free from encumbrances, charges and liens. The parties agree that any plant, fittings, chattels and fixtures which have been depreciated by the Vendor for income tax purposes are sold at their respective written down values and that the purchase price is proportioned accordingly.

48. Possession of the Business and Goods etc

- 48.1. The Vendor shall give possession of the Business to the Purchaser on the completion date or on such other date as may be mutually agreed.
- 48.2. Any goods sold will be delivered to the Purchaser on the completion date in the same state of repair as at the date hereof fair wear and tear accepted and where applicable in proper working order unless otherwise specified herein.
- 48.3. The Vendor will be entitled to the takings and profits and will bear or pay all charges and amounts due for outgoings in respect of the Business up to the date of completion, on and from which date the Purchaser will be entitled to or will pay or bear the same respectively.

49. Discharge of Debts etc

- 49.1. The Vendor will discharge all debts and liabilities which have been incurred by them in connection with the Business (including hiring or hire purchase agreements) and which have not been discharged at the time of completion and will keep the Purchaser indemnified against all claims and proceedings in respect thereof.
- 49.2. The Vendor will be entitled to payment of all debts owing to the Business at the time of completion and the Purchaser will promptly account to the Vendor for all payments received by them relating to such debts.

50. Notice to complete

- 50.1. If Completion does not occur on or before 4:00 pm on the Completion date, or at any time agreed by the Vendor and Purchaser, either party (as long as that party is not in default under this Contract) may:
- (a) serve on the other a notice requiring Completion on a specified date at least 14 days after the date of service of the notice, which time period the parties expressly agree is reasonable and sufficient even though the period includes days which are not business days;
 - (b) make time of the essence for compliance with that notice; and
 - (c) at any time withdraw that notice without prejudice to the continuing right of that party to give any further notice.
- 50.2. If the Vendor is required to issue any notice pursuant to this clause, then the Purchaser will pay to the Vendor the sum of \$550.00 (including GST) being a genuine pre-estimate of the Vendor's legal costs of issuing the notice.
- 50.3. This clause 50 is an essential term of this contract.

51. Obligations of more than one Purchaser

If the Purchaser is more than one person then the obligations of the Purchaser herein shall be joint and several.

52. Purchaser relies on own enquiries

- 52.1. The Purchaser agrees and acknowledges that the Vendor does not in any way guarantee or warrant the future profitability or viability of the Business. The Purchaser expressly acknowledges that the profitability of a business is dependent upon a variety of factors, including the Purchaser's own business skill, effort and acumen and as such past performance of the Business does not reflect or predict future performance.
- 52.2. The Purchaser acknowledges that, in entering into this Contract, it has relied upon its own enquiries and that it has not relied upon any statement, representation, warranty or condition made or given by the Vendor, or anyone on its behalf, in respect of the subject matter of this Contract, other than those expressly contained in this Contract.

53. Exchange on less than 10% deposit

- 53.1. If the Purchaser pays, and the Vendor accepts, less than 10% of the price as the deposit under clause 2, notwithstanding that, in the event of any default by the Purchaser under this contract, including any act or omission which in the opinion of the Vendor constitutes default, on written demand by the Vendor the Purchaser will immediately pay the Vendor an amount equal to the difference between 10% of the purchase price and the amount of deposit paid by the Purchaser.

54. Confidentiality

- 54.1. The Purchaser must keep confidential and not allow, make or cause any public announcement or other disclosure of or in relation to:
- (a) the terms of this contract (including any written or oral arrangements, negotiations or information in relation to this contract);
 - (b) any documents which are, or information which is, confidential under this contract,
- to any party, including the employees of the business and the lessor, without the Vendor's prior written consent, which must not be unreasonably withheld.

54.2. The Purchaser's obligations in clause 54.1 do not apply to a disclosure or announcement to the extent that the disclosure or announcement is required:

- (a) by law;
- (b) by the listing rules of the Australian Securities Exchange Limited;
- (c) to be made to any lender or financier, or to obtain legal or accounting advice, in connection with the contract.

(d) This is an essential term of this contract.

55. INTENTIONALLY DELETED

56. Stamp Duty and FIRB

56.1. The Purchaser must pay stamp duty (including any penalties or interest) on this Contract and on any documents that are executed under this Contract.

56.2. The Purchaser represents and warrants to the Vendor that it is not a foreign person as defined in the *Foreign Acquisitions and Takeovers Act 1978* and the Purchaser does not require approval from the Foreign Investment Review Board ("**FIRB**") to purchase the business.

56.3. The Purchaser indemnifies the Vendor against any liability or claim the Vendor may suffer or incur in connection with any failure by the Purchaser to pay stamp duty or the failure to make the proper disclosure to revenue authorities about the duty in accordance with clause 56.1 or a breach of the Purchaser's warranty under clause 56.2, including any penalties, fines, legal costs, claims, loss or damage suffered in connection with that breach.

56.4. This clause 56 does not merge on completion.

57. Trustee Purchaser

57.1. If the Purchaser is a trustee of a trust, then the Purchaser:

- (a) enters into this Contract in its capacity as trustee of the trust and in its own capacity; and
- (b) each person who signs this Contract warrants that as at the contract date and until completion:
 - (i) the Purchaser is the sole and only trustee of the trust;
 - (ii) the Purchaser is empowered by the trust deed of the trust to enter into this Contract; and
 - (iii) the trustee's right of indemnity out of, and lien over, the assets of the trust have not been limited in any way.

58. Governing Law

58.1. This contract is governed by the laws enforced in New South Wales.

58.2. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and courts of appeal from them.

59. Indemnities

The indemnities in this contract are continuing obligations, independent of any other obligations under this contract. For the avoidance of doubt, it is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under this contract.

60. Director's Warranty and Directors' Guarantees

60.1. If the Purchaser is a corporation which is not listed on the Australian Stock Exchange or which is not a Disclosing Entity as defined in s.111AC of the *Corporations Act 2001* (Cth), then each person who signs this Contract on behalf of the Purchaser warrants:

- (a) that the Purchaser is duly incorporated and registered as a corporation under all applicable laws; and
- (b) they are a director or secretary of the Purchaser.

60.2. The Guarantor gives the Guarantee in consideration of the Vendor agreeing to enter into this Contract. The Guarantor acknowledges the receipt of valuable consideration from the Vendor

incurring obligations and giving rights under the Guarantee.

- 60.3. The Guarantor unconditionally and irrevocably guarantees to the Vendor:
- (a) payment to the Vendor of the Guaranteed Money; and
 - (b) the due and punctual performance and observance of the Guaranteed Obligations.
- 60.4. If the Purchaser does not pay the Guaranteed Money on time and in accordance with the terms of this Contract then the Guarantor agrees to pay the Guaranteed Money to the Vendor on demand from the Vendor.
- 60.5. If the Purchaser does not duly and punctually perform the Guaranteed Obligations in accordance with the terms of this Contract then the Guarantor agrees to perform the Guaranteed Obligations on demand from the Vendor.
- 60.6. The Guarantor acknowledges:
- (a) all amounts due under the Guarantee are payable as soon as the Vendor gives the Guarantor a written demand for payment;
 - (b) the Vendor may make a demand under this Guarantee at any time and from time to time:
 - (i) without any pre-conditions first being met;
 - (ii) whether or not demand has been made by the Purchaser;
 - (iii) whether or not the Vendor has or is able to demand payment or performance from the Purchaser or anybody else;
 - (iv) whether or not the Vendor is able to or has attempted to recover any relevant amount or performance from the Purchaser or anybody else;
 - (v) whether or not the Vendor has exercised or exhausted any of its rights against the Purchaser or anybody else; and
 - (vi) whether or not the Purchaser or anybody else has to pay the relevant amount or perform the relevant obligation.
- 60.7. As a separate undertaking, the Guarantor unconditionally and irrevocably indemnifies the Vendor against:
- (a) all liability or loss arising from, and any costs, charges or expenses incurred with, the Guaranteed Money not being recoverable from the Guarantor under clauses 60.3, 60.4 or 60.5 or from the Purchaser because of any circumstances whatsoever; and
 - (b) all liability or loss arising from, and any costs, charges or expenses incurred in connection with, the Guaranteed Obligations not being duly and punctually performed because of any circumstance whatsoever.
- 60.8. It is not necessary for the Vendor to incur expense or make payment before enforcing that right of indemnity.
- 60.9. The Guarantor agrees to pay or reimburse the Vendor on demand for:
- (a) the Vendor's costs, charges and expenses in making, enforcing and doing anything in connection with the Guarantee including legal costs and expenses on whichever is the high of a full indemnity basis or solicitor and own client basis; and
 - (b) all stamp duties, fees, taxes and charges which are payable in connection with the Guarantee or a payment, receipt or other transaction contemplated by it.
- 60.10. If a claim to a payment to the Vendor in connection with this Contract or the Guarantee is void or voidable (including, but not limited to, a claim under laws relating to liquidation, administration, insolvency or protection of creditors) is upheld, conceded or compromised then the Vendor is entitled immediately as against the Guarantor to the rights to which it would have been entitled under the Guarantee if the payment had not occurred and on request from the Vendor, the Guarantor agrees to do anything (including signing any document) to restore to the Vendor any mortgage, charge or other encumbrance (including this Contract).
- 60.11. The Guarantee is a continuing security and liability and is not discharged by any one payment and extends to all of the Guaranteed Money and other money payable under the Guarantee and to all the Guaranteed Obligations. The Guarantor waives any right it has of first requiring the Vendor to proceed against or enforce any other right, power, remedy or security or claim payment from the Purchaser or any other person before claiming from the Guarantor under

the Guarantee.

- 60.12. The liabilities of the Guarantor under the Guarantee as a guarantor, principal debtor, principal obligor or indemnifier and the rights of the Vendor under the Guarantee are not affected by anything which might otherwise affect them at law or in equity including, without limitation, one or more of the following:
- (a) the Vendor or another person granting time or other indulgence to, compounding or compromising with or releasing the Purchaser; or
 - (b) acquiescence, delay, acts, omissions or mistakes on the part of the Vendor; or
 - (c) any variation or novation of a right of the Vendor, or alteration of this Contract or a document, in respect of the Purchaser; or
 - (d) the invalidity or unenforceability of an obligation or liability of a person other than the Guarantor.
- 60.13. As long as the Guaranteed Money or other money payable under the Guarantee remains unpaid or the Guaranteed Obligations or any of them remain unperformed, the Guarantor must not, without the Vendor's written approval:
- (a) raise a set-off or counterclaim available to it or the Purchaser against the Vendor in reduction of its liability under the Guarantee; or
 - (b) claim to be entitled by way of contribution, indemnity, subrogation, marshalling or otherwise of any benefit of any security or guarantee held by the Vendor in connection with this Contract; or
 - (c) make a claim or enforce a right (including, without limitation, a mortgage, charge or other Encumbrance) against the Purchaser or its Property; or
 - (d) prove in competition with the Vendor if a liquidator, provisional liquidator, receiver, manager, administrator or trustee in bankruptcy is appointed in respect of the Purchaser or the Purchaser is otherwise unable to pay its debts when they fall due.
- 60.14. The Guarantor acknowledges that before signing this Contract, and incurring obligations and giving rights under the Guarantee, it:
- (a) was given a copy of this Contract (and all documents giving rise to an obligation of the Purchaser in connection with this Contract) and had full opportunity to consider their provisions; and
 - (b) made itself aware of the financial position of the Purchaser and any other person who guarantees any of the Purchaser's obligations in connection with this Contract.
- 60.15. The Guarantor represents and warrants that its obligations under the Guarantee are valid and binding and that it does not enter into the Guarantee in the capacity of a trustee of any trust or settlement.
- 60.16. The Vendor may assign or otherwise deal with its rights under the Guarantee.
- 60.17. This clause is an essential term of this Contract.

61. Miscellaneous

- 61.1. A failure, delay, relaxation or indulgence by a party in exercising any power or right conferred on the party by this Contract does not operate as a waiver of the power or right. A single or partial exercise of the power or right does not preclude a further exercise of it or the exercise of any other power or right under this Contract. A waiver of a breach does not operate as a waiver of any other breach.
- 61.2. If any provision of this Contract offends any law applicable to it and is as a consequence illegal, invalid or unenforceable then:
- (a) where the offending provision can be read down so as to give it a valid and enforceable operation of a partial nature it must be read down to the extent necessary to achieve that result; and
 - (b) in any other case the offending provision must be severed from this Contract and the remaining provisions of this Contract operate as if the severed provision had not been included.
- 61.3. A term or condition of, or an act done in connection with, this Contract does operate as a merger of any of the rights or remedies of the parties under this Contract and those rights and

remedies continue unchanged. Each term of this Contract that has not been carried into effect at the termination of this Contract survives the termination.

- 61.4. This Contract is not to be construed to the disadvantage of a party because that party was responsible for its preparation.
- 61.5. A party cannot assign or otherwise transfer the benefit of this Contract without the prior written consent of the other party.
- 61.6. This Contract cannot be amended or varied except in writing signed by the parties.

62. Entire Agreement

This Contract, including any annexures and schedules referred to herein, is the entire agreement between the parties on the subject matter of the Contract. The only enforceable obligations and liabilities of the parties in relation to the subject matter are those that arise out of the provisions contained in this Contract. All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by this Contract.

63. Electronic Signatures

- 63.1. The parties agree to accept, for the purposes of exchange of contracts, signatures by either the vendors or purchasers and guarantors which are facsimile, emailed, photocopy or any other form of electronic signatures and to comply with the remaining provisions of this clause.
- 63.2. The parties agree to provide to the other parties within 10 business days after the date of this contract, a cover page of the contract bearing original signatures.
- 63.3. The parties agree that the cover page of contract bearing original signatures must be dated the same date as this contract.
- 63.4. The parties agree that they shall not make a requisition objection claim or delay completion due to the manner of execution of this contract as at the exchange date.

64. Booking Deposits

- 64.1. The parties acknowledge and agree that the Business collects an initial deposit for each booking, up to 50% of the value of the booking (referred to as a booking fee or booking deposit) ("**Booking Deposits**").
- 64.2. The parties acknowledge and agree that:
 - (a) the Vendor will retain all Booking Deposits received up to and including Completion of this Contract;
 - (b) the Purchaser will be entitled to all Booking Deposits received after the date of Completion of this Contract, along with the balance of the booking payment for each booking.
- 64.3. Notwithstanding any other provisions in this Contract, the vendor will provide a list of all gift vouchers and bookings prior to completion to the purchasers' conveyancer that will occur after the completion date including any deposits taken and total price of the book and all relevant details.
- 64.4. The vendor will do all reasonable acts and things necessary to continue to take bookings for the advertised price, or price matched to online booking platforms where relevant, up to completion.
- 64.5. On completion the vendor will provide to the Purchaser any records of past visitors to the property including visitors contact email addresses.

65. Domain name, website and email address

- 65.1. The vendor will on or before completion sign all documents and do all things necessary to comply with the requirements of the service provider enabling the ongoing ownership control and use by the purchaser of:
 - (a) The domain name: thebronte.com.au
 - (b) The website: <https://www.thebronte.com.au>
 - (c) The email address: stay@thebronte.com.au

- 65.2. The vendor will pay all sums of money due and payable to the service provider up to and including the day of completion, provided that payments made in advance will be adjusted on completion.
- 65.3. All data and records relating to the domain name, the website and the email address shall become the property of the purchaser on completion.

**ANNEXURE A
LIST OF EMPLOYEES**

TO BE PROVIDED TO PURCHASER DURING NEGOTIATIONS

**ANNEXURE B
INVENTORY**

LINEN	Item	Count	Unit Value	Total Value
	King Flat Sheet	50		
	King Stripe Sheets	50		
	King Fitted Sheets	6		
	King Winter Quilts	3		
	King Quilt Covers	8		
	Queen Fitted Sheets x03	6		
	Single Flat Sheets	11		
	Single Stripe Sheets	4		
	Single Fitted Sheets	3		
	Single Summer Quilts	2		
	Large Stripe Pillowcases	55		
	Sml Stipe Pillowcases	78		
			Sub Total	\$ -

CLEANING EQUIPMENT AND PRODUCTS

Item	Count	Unit Value	Total Value
Backpack Vacuum	1		
Stick Vacuum	1		
Mops	2		
Mop Heads	8		
Feather Dusters	2		
Cleaning Buckets	3		
Laundry Hamper	1		
Washing Baskets	2		
Toilet Brush	1		
Floor Cleaner	1		
Med Rubbish Bags	3		
Lge Rubbish Bags	2		
			Sub Total
			\$ -

Kitchen

BUFFET

Item	Count	Unit Value	Total Value
Decorative Jars	4		
Breakfast Glasses	18		
Short Black Cup and Sourcer	6		
Lge Mugs	10		
Latte Glasses	4		

Sml Milk Jugs	3
LgeMilk Jugs	4
Tooth Picks Packs	2
Wooden Tea Bag Holder	1
Sml Square Plate	4
Cookie Jar	1
Hot Water Dispenser	1

Sub Total \$ -

KITCHEN

Item	Count	Unit Value	Total Value
Microwave	1		
Toasters	3		
Fridge	1		
Juice Jugs	5		
Wine Glasses	12		
Hand Mixer	1		
Cutlery Trays	2		
Plastic Containers	7		
Food Sealing Pegs	22		
Sugar Bowls	9		
Fruit Bowls	10		

Sub Total \$ -

Din

DINING/ LOUNGE ROOM

Item	Count	Unit Value	Total Value
Chinese elm chair	4		
Velvet Sofa	3		
Persian Rug	1		
Plants	2		
Antique Chiffonier	1		
Georgian Drinks Canbinet	1		
Tea Cups	11		
Sourcers	6		
Port Glasses	10		
Kettle	1		
Large Italian Poster	1		

Sub Total \$ -

ENTRY WAYS, HALLWAYS AND FOYERS

Item	Count	Unit Value	Total Value
Persian hall rugs	3		
antique oil paintings	3		
French provincial side board	1		
chinese side tables	2		
Hand Sanitizers	3		
Fire Extinguisher	1		
Tissues	2		
Scented Candles	2		

Sub Total \$ -

Rooms 1 to 6

Item	Count	Unit Value	Total Value
Single Bed Bases	8		
Single Mattresses	2		
King Mattresses	3		
Queen Beds	2		
Bedside Tables	12		
French Amours	1		
Lamps	13		
Lge Pillows	8		
Sml Pillows	16		
Cushions	16		
Ironing Boards	6		
Irons	6		
Lge Antique Marble Table	1		

Sub Total \$ -

Lofts 7 and 8

Item	Count	Unit Value	Total Value
TVs	2		
Queen beds	2		
Lounge/ Sofa Beds	2		
Dining Tables	2		
Dining Chairs	6		
Bedside Tables	4		
Lamps	4		
Suitcase Stand	2		
Blinds	5		
Dishwashers	2		
Fridges	2		
Air Conditioners	2		
Pillows	12		
Queen Quilts	2		
Wash Clothes	2		
		Sub Total	\$ -

Item	Count	Unit Value	Total Value
			\$ -
			\$ -
Laundry Powder	1		
Laundry Booster	1		
Ladders	1		
Brooms	2		
Bins	1		
Dinner Plates	12		
Rag Towels	3		
Bluetooth Speaker	1		
Sealant Tubes	3		
Screw drivers	2		
Rolls of Wire	2		
Extension Leads	2		
Micro Fibre Rollers	2		
Aquadhere Bottle	1		
Pamphlet Holders	3		

Hair Dryer Holder	1
Potting Mix Bags	2
Lge Pot Plants	7
Paint Applicator	1
Tall Reading Lamp	1

Item	Count	Unit Value	Total Value
Antique Cedar Hall Table	1		
French side board	1		
Green French Chairs	2		
Gold French chairs	2		
Purples French chairs	2		
Cedar side table	1		
Cedar oval Table	1		
Chineseese Antique Chairs	2		
Anitique pine wardrobe	1		
Cedar chest of drawers	1		
Victorian Card Table	1		
Victorian chairs Blue	2		

Item	Count	Unit Valu	Total Value
Aboriginal Artworks	2		
Australian Screen prints	2		
Nina Batley Large Acrylics	2		

Sub total

Downstairs Store room

Item	Count	Unit Value
Towels		50
Hand Towels		30
Bath Mats		17
Face Washers		46
Robes		40
Red Laundry Bags		21
Laundry Bags		6
Waffle Blanket		1
Sofa Bed Mattress Protector		1
Waffle Bath Mats		10

Sub Total

Item	Count	Unit Value
Multi Purpose Cleaner		4
Toilet Cleaner		3
Air Freshener		2
Furniture Polish		2
Rinse Aid		2
Disinfectant		1
Bug Spray		3
Glass Cleaner		3
Reed Diffuser		1

Sub Total

1, Buffet and Verandah

Item	Count	Unit Value
Sml Clip Boards		6
Tea/ Coffee Cannisters		2
Iron Tea pots		6
Tea Pots		4
Tea Cups		32

Sourcers	40
Nespresso Machine	1
Milk Frother	1
Bar Fridge	1
Wooden Buffet	1
Wooden Table	1
Lg Dust Pan	1

Sub Total

Item	Count	Unit Value
Fry Pans	4	
Pots	2	
Kettle	1	
Sml Freezer	1	
Chopping Boards	4	
Pealers	2	
Tongs	2	
Measuring Cups/ Jugs	3	
Tea Towels	18	
Scissors	1	
Egg Cups	2	

Sub total

ing/ Lounge Room Hallways and Upstairs Foyers

Item	Count	Unit Value
Japanese screens	2	
High Back Antique Chairs	2	
Ottoman	1	
Wooden Serving Tray	1	
Plastic Serving Tray	1	
Magazines	30	
Bottle of Port	1	
Asian Serving Plate	1	
Asian Décor Jars	6	
Tea Pots	2	
Venetian Oil Painting	1	

Sub Total

UPSTAIRS CUPBORDS

Item	Count	Unit Value
Tissues	2	
Sml body Wash	3	
Sanitary bags	33	
Shower Caps	5	
Lge Shampoo	5	
Lge Conditioner	5	
Sml Lotion	6	
Hand Sanitizer	1	
Magazines	15	
Décor Clock	1	

Sub total

Item	Count	Unit Value
Keys	6	
Large Chinese Ginger Jar	1	
Wooden Tray	6	
Drinking Glasses	12	
Wine Glasses	12	
Sml Snack Bowl	6	
Sml Plates	12	
Cloth Serviette	6	
Cheese Board	6	
Butter Knives	12	
Single Bed Valances	16	
Queen Valances	2	
Coat Hangers	50	

Sub total

Item	Count	Unit Value
Microwaves	2	
Vacuums	2	
Irons	2	
Ironing Boards	2	
Coat Hangers	20	
Tea Towels	4	
Toilet Brushes	2	
Toilet Paper Cannisters	2	
Lge Shampoos	2	
Lge Conditioners	2	
Lge Body Washes	2	
Sml Lotions	4	
Rugs	2	
Hand Sanitizers	2	
Tea Pots	1	

Sub total

Item	Count	Unit Value
Single Valances	2	
Pin Board	1	
Bags of Xmas Décor	1	
Baskets	3	
Single Quilts	1	
Queen Valances	1	
Toilet Roll Cannisters	2	
Spray Bottles	6	
120w Light Bulbs	4	
Light Bulbs	12	
Power Pack	1	
Bag of bed Wheels	1	
Cordless Drill	1	
Sml Garden Spade	1	
20 Piece Screwdriver Set	1	
Business Card Holder	1	

Watering Can	1
Ryobi Blower	1
Step Ladders	2
Garden Netting Roll	1

Item	Count	Unit Value
Outdoor balcony chairs	2	
Mahogany Desk chair	1	
Inlaid anitque Desk with dr.	1	
Table on Balcony	1	
luggage Racks	6	
Japanese silk bedheads	4	
Antique Chinese Silk Roon	1	
Norman Lindsay Etching	1	
Collage Painting	1	

om Stock

Total Value

TOILETRIES

Item

- Sml Shampoo
- Sml Lotion
- Sml Body Washes
- Bathing Caps
- Sanitary Bags

\$ -

Other Stock and Furniture

Total Value

Item

- Roll away Bed
- Fridge
- Med Bin
- Whiteboard
- Printer/ Scanner
- Fire Extinguisher
- Sml Storage Tubs
- Plastic Storage Drawer
- Tissues
- Water
- 3L hand Wash
- Cleaning Rags

\$ -

Total Value

Item

- Marble Tables
- Chairs
- Lights
- Chinese Box & Basket
- Chinese Bar Cabinet

Serviettes Cloth
Serviettes
Plants
Plastic Blinds
Med Recycle Bin
Broom
Gold Mirror

\$ -

Total Value

Item

Paper Towel Holders
Knife Block
Cereal Containers
Dish Rack
Roll of Sticky tape
Forks
Metal Buckets
Milk Cannisters
Bottle Openers
Med White Plates
White Dinner Plates

\$ -

Total Value

Item

Mugs
Tea Strainer
Cookie Jar
Tea/ Coffee Cannister:
Instant Coffee
Art Deco ornament
Antique Clock
Snack Bowl
Steel Door Stop
Dinig Table Chairs
Antique Chinese por
Chinese Stools

\$ -

Total Value

Item

Décor Tea Set

Reed Diffuser

Large Anitquet French

French antique over m

Antique Dore stops

\$ -

Total Value

Item

Bathroom Cups

Lge Body Washes

TV

Wall Mirrors

Suit Case

Wooden Bathroom Ca

Lg Shampoo

Lge Conditoner

Toilet Brush

Toilet Paper Cannister

Sml Bins

Wooden Bath Tub Boæ

Asian Sideboard

\$ -

Total Value

Item

- Sml Body Washes
- Sannitary Bags
- Shower Caps
- Hair Dryers
- Coffee Machines
- Kettles
- Toasters
- Glasses
- Wine Glasses
- Champagne Glasses
- Mugs
- Sml Side Table
- Door Mats
- Blinds
- Mixing Bowls

\$ -

Outside Laundry and Storeroom

Total Value

Item

- Bathroom Cups
- Air Freshener
- Hand sanitizers
- Lge Body Washes
- Lge Conditioner
- Lge Shampoo
- Buckets
- Lge Garden Spade
- Battery Chargers
- Hammer
- Toilet Roll Cannister
- Ryobi Hedge Trimmer

Total Value

Count	Unit Value	Total Value
--------------	-------------------	--------------------

67		
34		
61		
92		
129		

Sub Total	\$	-
-----------	----	---

Count	Unit Value	Total Value
--------------	-------------------	--------------------

1		
1		
1		
1		
1		
1		
1		
2		
2		
5		
1		
1		
83		

rs

Sub Total	\$	-
-----------	----	---

VERANDA

Count	Unit Value	Total Value
--------------	-------------------	--------------------

12		
12		
1		
1		
1		

30
1
2
4

1

Sub Total \$ -

Count Unit Value Total Value

6
1
2
1
1
17
2
2
4
8
8

Sub Total \$ -

Count Unit Value Total Value

6
1
1
2
1
1
1
1
1
1
2
1
2

s

trait

Sub Total \$ -

Count	Unit Value	Total Value
1		
2		
1		
1		
3		

Sub Total \$ -

Count	Unit Value	Total Value
6		
6		
4		
4		
6		
6		
6		
6		
6		
6		
12		
2		
1		

Sub total \$ -

Count Unit Value Total Value

4		
8		
4		
2		
2		
2		
2		
2		
10		
12		
12		
4		
2		
10		
2		
	Sub total	\$ -

Count Unit Value Total Value

4		
2		
6		
3		
5		
5		
1		
1		
2		
1		
1		
1		

Item**Count****Unit Value**

Salt Shakers

Pepper Shakers

Wooden Tray

CD Player

CDs

Champagne Flutes
Glass Jars
Round Serving Trays
Tin Water Can
Basket
Mop

Sub Total

Item	Count	Unit Value
Bathroom Cups	3	
Glasses	3	
Sml Ceramic dish	13	
Wooden Trays	6	
Cane Baskets	2	
Tea Spoons	31	
Other Spoons	5	
Butter Knives	20	
Table Spoons	19	
Lge Serving Spoons	7	
Other Forks	9	

Sub Total

Item	Count	Unit Value
Georgian Grandfather Clock	1	
Asian Décor Cannisters	7	
Sml Mantel Piece Clock	1	
Plastic panflet Displays	3	
Metal Drink Tray	1	
Magazine Basket	1	
Scented Candle	1	
Antique Wine Table	1	
Cushions	4	
Czech Servingplates	1	
Czech Serving Bowls	3	
Georgian armchair	1	

Sub total

Item	Count	Unit Value
Smart TV's	2	
Tissues	6	
Reed Diffusers	6	
Lge Clipboards	6	
Sml Clipboards	6	
Curtains	6	
Sanitary Bags	12	
Shower Caps	66	
Sml Lotions	6	
Sml Marble Tables	2	
Paper Towel Holders	6	
Window Blinds	5	

Sub Total

Item	Count	Unit Value
Dinner Plates	8	
Bowls	8	
Sml Plates	8	
Steak Knives	7	
Forks	8	
Spoons	8	
Tea Spoons	8	
Butter Knives	8	
Cooking Knives	12	
Wooden Tea box	2	
Hand Wash	2	
Sml Bins	2	
Grant Featherstone chairs	2	
Cheese Graters	2	
Plastic Strainer	2	

Item	Count	Unit Value
Printing paper	1	
New Cleaning Rags	2	
Sandpaper Blocks	2	
Paint Brushes	3	
Dust Pan	1	
Whipper Snipper	1	
Whipper Snipper Cord	1	
Wellasoil Seasonal	2	
540ml Round Off	1	
Sanitary Bags	125	
Sml Body Lotion	320	
Shampoo	80	
Indoor Broom	1	
Cobweb Brushes	2	
Outdoor		
Japanese Stone Lantern	1	

Concrete Chinese Lanterns	2
Standard Figs in pots	2
Standard Figs in pots	2
Large Pots	2
Large Pot with standard	1

Sub Total

Area Total \$ -

Area Total \$ -

Total Value

Area Total \$ -

\$ -

Total Value

Area Total \$ -

\$ -

Total Value

Area Total \$ -

\$ -

Area Total \$ -

Total Value

Area Total \$ -

\$ -

Total Value

Area total \$ -

Total Value

Area Total \$ -

\$ -

Area Sub Total \$ -

Area Sub total \$ -

All totals added

0

**ANNEXURE D
LIST OF EXCLUDED ASSETS**

All assets not included at Annexure B.

Business mobile phone number.

**ANNEXURE E
NEW LEASE**

Form: 07L
Release: 4.7
Licence: 01-05-028
Licensee: LEAP Legal Software Pty Limited
Firm name: Jenkins Legal Services

LEASE
New South Wales
Real Property Act 1900

Leave this space clear. Affix additional pages to the top left-hand corner.

PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

STAMP DUTY

Insert Duties Assessment No. as issued by Revenue NSW Office.

Duties Assessment No. _____

(A) TORRENS TITLE

Property leased: if appropriate, specify the part or premises
PART 2/SP74847, BEING "BRONTE HOUSE", 145 - 147 SWAN STREET, MORPETH, NEW SOUTH WALES 2323, INCLUDING DINING ROOM, KITCHEN, COURTYARD AND ROOMS 1 - 8

(B) LODGED BY

Document Collection Box	Name, Address or DX, Telephone, and Customer Account Number if any	CODE
	Email: _____ Reference: _____	L

(C) LESSOR

MORPETH PROPERTY MANAGEMENT PTY LTD ACN 600 500 749

The lessor leases to the lessee the property referred to above.

(D)

Encumbrances (if applicable):

(E) LESSEE

HUNTER VALLEY BOUTIQUE ESCAPES PTY LTD ACN 150 006 849

(F)

TENANCY:

(G)

- TERM** Three (3) years
- COMMENCING DATE**
- TERMINATING DATE**
- With an **OPTION TO RENEW** for a period of Three (3) Years set out in item 12 of Annexure A
- With an **OPTION TO PURCHASE** set out in clause N/A of N/A
- Together with and reserving the **RIGHTS** set out in clause N/A of N/A
- Incorporates the provisions or additional material set out in **ANNEXURE(S)** A & B hereto.
- Incorporates the provisions set out in N/A No.
- The **RENT** is set out in item No. 13 of Annexure A

DATE / /

(H) Certified correct for the purposes of the Real Property Act 1900 and executed on behalf of the corporation named below by the authorised person(s) whose signature(s) appears(s) below pursuant to the authority specified.

Corporation: Morpeth Property Management Pty Ltd ACN 600 500 749
Authority: section 127 of the Corporations Act 2001
Signature of authorised person:

Signature of authorised person:

Name of authorised person:
Office held: Director/Secretary

Name of authorised person:
Office held: Director/Secretary

Certified correct for the purposes of the Real Property Act 1900 and executed on behalf of the corporation named below by the authorised person(s) whose signature(s) appears(s) below pursuant to the authority specified.

Corporation: Hunter Valley Boutique Escapes Pty Ltd ACN 150 006 849
Authority: section 127 of the Corporations Act 2001
Signature of authorised person:

Signature of authorised person:

Name of authorised person:
Office held: Director

Name of authorised person:
Office held: Director

(I) STATUTORY DECLARATION *

I solemnly and sincerely declare that—

- 1. The time for the exercise of option to renew in expired lease No. has ended;
2. The lessee under that lease has not exercised the option.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Oaths Act 1900.

Made and subscribed at in the State of New South Wales on
in the presence of

- [] Justice of the Peace (J.P. Number:) [] Practising Solicitor
[] Other qualified witness [specify]

who certifies the following matters concerning the making of this statutory declaration by the person who made it:

- 1. I saw the face of the person OR I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had special justification for not removing the covering; and
2. I have known the person for at least 12 months OR I have confirmed the person's identity using the identification document and the document I relied on was a

Signature of witness: Signature of lessor:

* As the services of a qualified witness cannot be provided at lodgment, the declaration should be signed and witnessed prior to lodgment. ** If made outside NSW, cross out the witness certification. If made in NSW, cross out the text which does not apply.

** s117 RP Act requires that you must have known the signatory for more than 12 months or have sighted identifying documentation.

Lessor: MORPETH PROPERTY MANAGEMENT PTY LTD ACN 600 500 749

Lessee: HUNTER VALLEY BOUTIQUE ESCAPES PTY LTD ACN 150 006 849

This annexure consists of 4 pages.

NOTE: Any alterations and additions to Lease Covenants in Annexure B **must** be made by additional clauses in Annexure A. The printed clauses in Annexure B are to remain in their copyright form without alteration.

SCHEDULE OF ITEMS (continued)

Item 10
(cls 2.3, 13.1)
(cl 13.7)

- A. **The guarantor:**
- B. **Limit of guarantor’s liability:**

Item 11
(cl 3)

Additional leased property:

Item 12
(cl 4)

Option to renew

- A. Further period of Three (3) years from to
- B. Further period of from to
- C. Further period of from to
- D. Further period of from to

Maximum period of tenancy under this lease and permitted renewals: 6 years

- E. First day option for renewal can be exercised: 9 months prior to the terminating date
- F. Last day option for renewal can be exercised: 1 month prior to the terminating date

Item 13
(cl 5)

A. **Rent**

For the lease period:

From the commencement date
to the first rent review date:

\$104,000.00 plus GST per annum payable by
equal monthly instalments in advance of
\$8,666.66 plus GST

Afterwards:

At the new yearly rent beginning on each
review date by monthly instalments of one
twelfth of the new yearly rent.

For the further period in items 12A – 12D:

From the commencement date
to the first rent review date:
(for example: Current market rent)
Afterwards:

Current market rent, to be paid by monthly
instalments.

At the new yearly rent beginning on each
review date by monthly instalments of one
twelfth of the new yearly rent.

Item 13
(cl 15)

B. GST

Clause 15 provides for payment by the lessee of GST unless otherwise here indicated:

Item 14
(cl 5)

Outgoings

- A. Share of outgoings: 94.38%
- B. Outgoings –
- (a) local council rates and charges;
 - (b) water sewerage and drainage charges;
 - (c) building insurance;
 - (d) yard and general repairs and maintenance;

for the land or the building of which the property is part, fairly apportioned to the period of this lease.

Item 15
(cl 5.1.5)

Interest rate: 10%

Item 16
(cl 5.4)

Rent review

Rent review date	Method of rent review	If Method 1 applies, increase by (the increase should show percentage or amount)
On each anniversary of the commencing date, including during any period after the option to renew is exercised (but not including the first commencing date after exercise an option to renew)	Method 2	
On the first commencing date after an option to renew is exercised	Method 3	

Method 1 is a fixed amount or percentage.

Method 2 is Consumer Price Index.

Method 3 is current market rent.

Method 2 applies unless another method is stated.

Item 17
(cl 6.1)

Permitted use: Boutique Hotel, including without limitation bed and breakfast, guest house accommodation, food and drink premises, catering, events and any other similar uses approved by Council.

Item 18
(cl 8.1.1)

Amount of required public liability insurance: \$20,000,000.00

Item 19
(cl 16)

Bank Guarantee

Not applicable.

Item 20 **Security Deposit**

(cl 17)

An amount equivalent to three months' rent.

~~Details of strata manager/secretary of the owners corporation (if applicable)~~

The following alterations and additions are to be made to the Lease Covenants in Annexure B:

19. UTILITIES

- 19.1 The Lessee will arrange accounts for and be responsible for all charges for utilities provided to or consumed upon the property, including but not limited to water usage, electricity, trade waste, telephone, garbage, waste removal, air conditioning service and maintenance and other like and similar charges.
- 19.2 If any such charges are rated jointly with other premises not forming part of the property, then the Lessee's proportion of the overall charges will be that proportion that is obtained by taking the lettable area of the property leased and dividing it by the area of all premises jointly rated (including the area of the property) that was actually occupied during the period covered by the account.
- 19.3 For any charges payable by the Lessee under clause 19.2, the Lessor will, when requesting payment by the Lessee, provide to the Lessee a copy of the invoice and calculation of the Lessee's proportion of the overall charge.

20. CONDITION AND REPAIRS

- 20.1 The lessee agrees to maintain and keep in good repair the lessor's existing contents, fixtures and fittings and is responsible for any repairs or replacement of such items. This includes the regular maintenance of the air-conditioning system as recommended by duly licensed and qualified technicians. Any capital replacement costs relating to the air-conditioning services shall be borne by the lessor.
- 20.2 The lessee shall also be required to regularly service and maintain all fire services within their tenancy in accordance with the relevant fire safety standards. If, at any time during the lease term and any option periods there is a significant change in the fire regulations surrounding the type of operations that the Lessee undertakes at the premises, both parties agree to mediate immediately to determine how the changes are to be implemented and how the associated costs are determined.
- 20.3 In the event that any of the hotel bathrooms have waterproofing issues, both parties must agree to attend mediation immediately to determine if any tiling has been affected. If so, both parties must meet immediately to determine the cause of the affectation and how the associated costs to rectify are determined.
- 20.4 The lessor will promptly carry out any structural or capital repairs that it is required to do under this lease or otherwise agrees to as part of any mediation.

21. SIGNAGE

- 21.1 The Lessee must obtain prior written approval from the Lessor to erect any signage on or outside the property. The lessor must not unreasonably withhold consent. The Lessee will be responsible for any costs of maintaining the signage at the front of property and will reimburse any costs to the Lessor.

22. INTENTIONALLY DELETED

23. LESSEE SALE OF BUSINESS AND ASSIGNMENT

- 23.1 Notwithstanding any other term of this lease, if the lessee wishes to assign this lease:
- (a) the lessor must not unreasonably withhold its consent to any assignment provided that the lessee establishes to the lessor's satisfaction (acting reasonably) that any proposed assignee is of good reputation, and that any assignee is financially capable of meeting the obligations of the tenant under this Lease; and
 - (b) the lessee may request that the lessor re-set the lease term and options and the parties must negotiate in good faith in relation to the new lease term and options to assist in any sales process. Neither party may unreasonably withhold consent to these negotiations.

24. RATCHET CLAUSE

Notwithstanding any other term of this lease, the parties acknowledge and agree that if any rent review rent would result in a rent that is less than the rent payable for the corresponding period immediately preceding the rent review, then the rent will remain unchanged.

ANNEXURE B

Lessor: MORPETH PROPERTY MANAGEMENT PTY LTD ACN 600 500 749

Lessee: HUNTER VALLEY BOUTIQUE ESCAPES PTY LTD ACN 150 006 849

This annexure consists of 13 pages.

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NOTE: Any alterations and additions to Lease Covenants in Annexure B must be made by additional clauses in Annexure A. The printed clauses in Annexure B are to remain in their copyright form without alteration.

CONTENTS

Table with 6 columns: CLAUSE, SUBJECT, PAGE, CLAUSE, SUBJECT, PAGE. Lists clauses 1-18 and their corresponding subjects and page numbers.

RETAIL LEASE CERTIFICATE

If section 16 of the Retail Leases Act 1994 applies to this lease, and the term plus any further terms are less than 5 years (subject to section 16(4)), the term will be extended unless a section 16(3) certificate is given. Sections 16(1) and (2) provide –

- 16(1) The term for which a retail shop lease is entered into, together with any further term or terms provided for by any agreement or option for the acquisition by the lessee of a further term as an extension or renewal of the lease, must not be less than 5 years. An agreement or option is not taken into account if it was entered into or conferred after the lease was entered into.
16(2) If a lease is entered into in contravention of this section, the validity of the lease is not thereby affected but the term of the lease is extended by such period as may be necessary to prevent the lease contravening this section.

I certify that:

- I am a solicitor not acting for the lessor;
Before (or within 6 months after) the lessee entered into this lease –
- the lessee requested me to give this certificate; and
- I explained to the lessee the effect of sections 16(1) and (2), and that the giving of this certificate would result in section 16 not applying to this lease.

Date

Signature

NAME (BLOCK LETTERS)

CLAUSE 1 FORM OF THIS LEASE**What are the parts to this lease?**

- 1.1 There are three parts to this lease – a lease form, Annexure A and this annexure.
- 1.2 This lease is a deed even if it is not registered.
- 1.3 A reference in this deed to the schedule is to the schedule of items commencing at item 1 on the lease form and ending with item 20 in Annexure A.

CLAUSE 2 PARTIES**Who are the parties to this lease?**

- 2.1 The lessor is named on page 1 of this lease.
- 2.2 The lessee is named on page 1 of this lease.
- 2.3 The guarantor is named in item 10 in the schedule, if there is a guarantor.
- 2.4 If a party consists of two or more persons, obligations of that party can be enforced against any one or more of them.

CLAUSE 3 THE PROPERTY**What property is leased?**

- 3.1 The property leased is described on page 1 of this lease.
- 3.2 The lessor's fixtures are included in the property leased.
- 3.3 If anything else is leased (such as furniture belonging to the lessor) and is described in item 11 in the schedule it is included in the property.
- 3.4 If the property has facilities and services shared in common with other persons in the same building as the property, clause 11.3.2 applies to those common facilities. The lessee shares the common facilities with the lessor, and with other lessees of the lessor. The lessor can set reasonable rules for sharing these common facilities.

CLAUSE 4 LEASE PERIOD**How long is this lease for?**

- 4.1 This lease is for the period stated in item 1 in the schedule, commences on the date stated in item 2 in the schedule and ends on the date stated in item 3 in the schedule.
- 4.2 If a further period, commencing when this lease ends, is stated in item 12A in the schedule then the lessee has the option to renew this lease for that period.
- 4.3 The lessee can renew this lease more than once if that is stated in item 12B in the schedule. However the period of tenancy under this lease and under any renewal(s) is, in total, not longer than the maximum period stated in item 12C in the schedule.
- 4.4 The lessee can exercise the option only if –
 - 4.4.1 the lessee serves on the lessor a notice of exercise of option not earlier than the first day stated in item 12D in the schedule and not later than the last day stated in item 12E in the schedule;
 - 4.4.2 there is at the time of service no rent or outgoing that is overdue for payment; and
 - 4.4.3 at the time of service all the other obligations of the lessee have been complied with or fully remedied in accordance with the terms of any notice to remedy given by the lessor.

If this lease is extended by legislation, items 12D and 12E in the schedule are adjusted accordingly.

- 4.5 After exercising the option the lessee must continue to pay all rents and outgoings on time and continue to comply with all of the lessee's obligations under this lease. If the lessee does not do so, the lessor may treat any breach as being a breach of the new lease as well as of this lease.

ANNEXURE B

- 4.6 A new lease will be the same as this lease except for –
- 4.6.1 the new rent;
 - 4.6.2 the commencement date and the termination date;
 - 4.6.3 the omission of clauses 4.2, 4.3, 4.4, 4.5 and 4.6 and items 12A and 12B in the schedule in the last lease allowed in item 12 in the schedule;
 - 4.6.4 item 12B becoming item 12A;
 - 4.6.5 adjustment of item 12C in the schedule; and
 - 4.6.6 adjustment of items 12D and 12E in the schedule. The number of days between the dates stated in items 12D and 12E in the schedule of the new lease and the termination date of the new lease and the number of days between each date stated in items 12D and 12E in the schedule of this lease and the termination date of this lease are to correspond.

If the new rent is to be current market rent it will be decided in the same way that current market rent is to be decided under Method 3 stated in clause 5 assuming that this lease and the new lease were one continuous lease and the commencement date of the new lease was a rent review date.

CLAUSE 5 MONEY

What money must the lessee pay?

- 5.1 The lessee must pay to the lessor or as the lessor directs –
- 5.1.1 the rent stated in item 13A in the schedule;
 - 5.1.2 the share stated in item 14A in the schedule of those outgoings stated in item 14B in the schedule;
 - 5.1.3 the reasonable cost to the lessor of remedying a default by the lessee;
 - 5.1.4 the reasonable cost to the lessor of dealing with any application by the lessee for the lessor's consent under this lease (whether or not it is given);
 - 5.1.5 interest on these moneys at the rate stated in item 15 in the schedule when payment is more than 14 days overdue, calculated from the due date to the date of payment;
 - 5.1.6 registration fee for registration of this lease at Land and Property Information NSW (payable on delivery to the lessor's solicitor of the executed lease);
 - 5.1.7 stamp duty on this lease (payable on delivery to the lessor's solicitor of the executed lease) if not previously paid by the lessee to the Office of State Revenue;
 - 5.1.8 if the lessee defaults, the lessor's reasonable legal costs relating to the default;
 - 5.1.9 the lessor's reasonable costs and expenses in connection with the preparation of this lease but only that part of those costs and expenses which are permitted to be recovered by a lessor under section 14 and section 45 of the *Retail Leases Act, 1994*; and
 - 5.1.10 GST as provided for in clause 15.
- 5.2 The first month's instalment of rent is to be paid by the commencement date. Each later month's instalment of rent is to be paid in advance.
- 5.3 A payment under clause 5.1.2 must be paid on the next rent day after a request for payment is made by the lessor.
- A request for payment can be made –
- 5.3.1 after the lessor has paid an outgoing; or
 - 5.3.2 after the lessor has received an assessment or account for payment of an outgoing.

If item 14B in the schedule refers to land tax –

- if the property is a strata lot, the relevant land tax is land tax on that lot;
- if the property is not a strata lot but is part of a building, the relevant land tax is land tax on the land on which the building is situated, plus any land of the lessor used or available for use by or for the benefit of lessees conducting business in the building or in connection with trading in the building; and
- in either case, the land tax must be calculated as if the land was the only land owned by the lessor and there was no special trust or non-concessional company involved.

When and how is the rent to be reviewed?

- 5.4 The rent is to be reviewed on the rent review dates stated in item 16 in the schedule.

If this lease is extended by legislation, the rent review dates include each anniversary of the latest rent review date stated in item 16 in the schedule (or if none is stated each anniversary of the commencement date) which falls during the extension.

- 5.5 The lessee must continue to pay rent at the old rate until the new rate is known. After that, the lessee is to pay the new rent from the next rent day. By that rent day the lessee is also to pay any shortfall between the old and new rate for the period since the rent review date. Alternatively, the lessor is to refund to the lessee any overpayment of rent.

- 5.6 There are three different methods described here for fixing the new rent on a rent review date. The method agreed by the lessor and the lessee is stated at item 16 in the schedule. The lessee is entitled to a reduction if the method produces a rent lower than the rent current just before the review date.

Method 1. By a fixed amount or percentage.

- 5.7 In this case the rent beginning on each review date will be increased by the percentage or amount stated in item 16 in the schedule.

Method 2. By reference to Consumer Price Index.

- 5.8 In this case –

- take the yearly rent as of the last review date or if none, the rent at the commencement date (\$X),
- divide that rent by the Consumer Price Index Number for Sydney (All Groups) for the quarter ended just before that date (CPI 1),
- multiply the result by the Consumer Price Index Number for Sydney (All Groups) for the quarter ended just before the review date (CPI 2).

The product is the new rent for the year beginning on the review date (\$Y), written as a formula –

$$\frac{\$X}{\text{CPI 1}} \times \text{CPI 2} = \$Y$$

- 5.9 The lessor must calculate the new rent after each review date and give the lessee written notice of the new rent.
- 5.10 If the Australian Bureau of Statistics makes a change in the reference base of the index and there is a published co-relation between the old and new base then the published co-relation is to be applied to convert the CPI 1 figure to the new reference base. If there is none then the lessor and the lessee agree to accept the calculations of the lessor's solicitor who must be retained to determine a fair co-relation between the old and the new series of numbers.
- 5.11 If the index used to calculate the new rent is discontinued the lessor may substitute another index that, as nearly as practicable, serves the same purpose and, if there is no such index, then the rent will be fixed by Method 3.

Method 3. By reference to current market rent.

- 5.12 In this case the rent is to be the current market rent. This can be higher or lower than the rent payable at the rent review date and is the rent that would reasonably be expected to be paid for the property, determined on an effective rent basis, having regard to the following matters –
- 5.12.1 the provisions of this lease;
 - 5.12.2 the rent that would reasonably be expected to be paid for the property if it were unoccupied and offered for renting for the same or a substantially similar use to which the property may be put under this lease;
 - 5.12.3 the gross rent, less the lessor's outgoings payable by the lessee;
 - 5.12.4 where the property is a retail shop, rent concessions and other benefits that are frequently or generally offered to prospective lessees of unoccupied retail shops; and
 - 5.12.5 the value of goodwill created by the lessee's occupation and the value of lessee's fixtures and fittings are to be ignored.

- 5.13 The lessor or the lessee can inform the other in writing at least 60 days before the rent review date of the rent that the lessor or lessee thinks will be the current market rent at the review date.
- 5.14 If the lessor and the lessee agree on a new rent then that rent will be the new rent beginning on the rent review date and the lessor and the lessee must sign a statement saying so.
- 5.15 If the lessor and the lessee do not agree on the amount of the new rent 30 days before the rent review date, the current market rent will be decided by a valuer appointed under clause 5.16.
- 5.16
- 5.16.1 Unless 5.16.2 applies the lessor and the lessee can either agree upon a valuer or can ask the President of the Law Society of New South Wales to nominate a person who is a licensed valuer to decide the current market rent.
- 5.16.2 Where the property is a retail shop, the valuer appointed must be a specialist retail valuer appointed by agreement of the parties or, failing agreement, by the Administrative Decisions Tribunal.
- 5.17 The valuer will act as an expert not an arbitrator. The lessor and the lessee can each make submissions in writing to the valuer within 14 days after they receive notice of the valuer's appointment but not later unless the valuer agrees.
- 5.18 The valuer's decision is final and binding. The valuer must state how the decision was reached.
- 5.19 If the valuer
- 5.19.1 does not accept the nomination to act; or
- 5.19.2 does not decide the current market rent within 1 month after accepting the nomination; or
- 5.19.3 becomes incapacitated or dies; or
- 5.19.4 resigns,
- then another valuer is to be appointed in the same way.
- 5.20 The lessor and lessee must each pay half the valuer's costs.
- 5.21 If the lessor and lessee do not agree upon a valuer and neither asks for a valuer to be nominated before –
- 5.21.1 the next rent review date passes; or
- 5.21.2 this lease ends without the lessee renewing it; or
- 5.21.3 this lease is transferred after the rent review date with the lessor's consent; or
- 5.21.4 the property is transferred after the rent review date
- then the rent will not change on that rent review date.

CLAUSE 6 USE

How must the property be used?

- 6.1 The lessee must –
- 6.1.1 use the property for the purpose stated in item 17 in the schedule and not for any other purpose;
- 6.1.2 open for business at times usual for a business of the kind conducted by the lessee;
- 6.1.3 keep the property clean and dispose of waste properly; and
- 6.1.4 comply with all laws relating to strata schemes and all other laws regulating how the property is used, obtain any consents or licences needed, comply with any conditions of consent, and keep current any licences or registrations needed for the use of the property or for the conduct of the lessee's business there.
- 6.1.5 where the property is a lot in a strata scheme:
- 6.1.5.1 use the lessor's common property only in connection with the use of the property;
- 6.1.5.2 co-operate with all other permitted users of the common property;
- 6.1.5.3 comply with so many of the provisions of the *Strata Schemes Management Act 1996* and the *Strata Schemes (Freehold Development) Act 1973* and the by-laws and all lawful orders, motions and directives under these Acts as may be applicable to the exercise of the lessee's rights and obligations under this lease.

- 6.2 The lessor can consent to a change of use and cannot withhold consent unreasonably.
- 6.3 The lessee must not –
- 6.3.1 do anything that might invalidate any insurance policy covering the property or that might increase the premium unless the lessor consents in which case the lessee must pay the increased premium; or
 - 6.3.2 use the property as a residence or for any activity that is dangerous, offensive, noxious, illegal or immoral or that is or may become a nuisance or annoyance to the lessor or to the owner or occupier of any neighbouring property; or
 - 6.3.3 hold any auction, bankrupt or fire sale in the property; or
 - 6.3.4 display signs or advertisements on the outside of the property, or that can be seen from the outside, unless the lessor consents (but the lessor cannot withhold consent unreasonably);
 - 6.3.5 overload the floors or walls of the property; or
 - 6.3.6 without the prior written consent of the lessor and/or the owners corporation, use the common property for any purpose other than for access to and egress from the property.

CLAUSE 7 CONDITION AND REPAIRS

Who is to repair the property?

- 7.1 The lessor must –
- 7.1.1 maintain in a state of good condition and serviceable repair the roof, the ceiling, the external walls and external doors and associated door jambs, and the floors of the property and must fix structural defects;
 - 7.1.2 maintain the property in a structurally sound condition; and
 - 7.1.3 maintain essential services.
- 7.2 The lessee must otherwise maintain the property in its condition at the commencement date and promptly do repairs needed to keep it in that condition but the lessee does not have to –
- 7.2.1 alter or improve the property; or
 - 7.2.2 fix structural defects; or
 - 7.2.3 repair fair wear and tear.
- 7.3 The lessee must also –
- 7.3.1 reimburse the lessor for the cost of fixing structural damage caused by the lessee, apart from fair wear and tear;
 - 7.3.2 maintain and decorate the shop front if the property has one;
 - 7.3.3 decorate the inside of the property in the last 3 months of the lease period (however it ends) – ‘decorate’ here means restoring the surfaces of the property in a style and to a standard of finish originally used e.g. by repainting;
 - 7.3.4 where the property is a lot in a strata scheme:
 - 7.3.4.1 meet the cost of all damage to the common property occasioned by the lessee or any invitee or licensee of the lessee; and
 - 7.3.4.2 permit the owners corporation, temporarily, to close any part of the common property for the purpose of making and effecting repairs to it.
- 7.4 If an authority requires work to be done on the property and it is structural work or work needed to make the property safe to use then the lessor must do the work unless it is required only because of the way the lessee uses the property. But if it is any other work or is required only because of the way the lessee uses the property then the lessee must do the work.
- 7.5 If the lessee fails to do any work that the lessee must do the lessor can give the lessee a notice in writing stating what the lessee has failed to do. After the notice is given the lessee must –
- 7.5.1 do the work immediately if there is an emergency; and
 - 7.5.2 do the work promptly and diligently in any other case.

If the lessee does not do the work, the lessor can do it and the lessee must reimburse the lessor for the cost of the work.

- 7.6 The lessee must not make any structural alterations to the property. Any other alterations require the lessor's consent in writing (but the lessor cannot withhold consent unreasonably).

CLAUSE 8 INSURANCE AND DAMAGE

What insurances must the lessee take out?

- 8.1 The lessee must keep current an insurance policy covering –
- 8.1.1 liability to the public in an amount not less than the amount stated in item 18 in the schedule (for each accident or event); and
 - 8.1.2 damage or destruction from any cause to all plate glass in the windows and other portions of the property
- and must produce to the lessor, upon request, the policy and the receipt for the last premium.

What happens if the property is damaged?

- 8.2 If the property or the building of which it is part is damaged (a term which includes destroyed) –
- 8.2.1 the lessee is not liable to pay rent, or any amount payable to the lessor in respect of outgoings and other charges, that is attributable to any period during which the property cannot be used under this lease or is inaccessible due to that damage;
 - 8.2.2 if the property is still useable under this lease but its useability is diminished due to the damage, the lessee's liability for rent and any amount in respect of outgoings attributable to any period during which useability is diminished is reduced in proportion to the reduction in useability caused by the damage;
 - 8.2.3 if the lessor notifies the lessee in writing that the lessor considers that the damage is such as to make its repair impracticable or undesirable, the lessor or the lessee can terminate this lease by giving not less than 7 days notice in writing of termination to the other and no compensation is payable in respect of that termination;
 - 8.2.4 if the lessor fails to repair the damage within a reasonable time after the lessee requests the lessor to do so the lessee can terminate this lease by giving not less than 7 days notice in writing of termination to the lessor; and
 - 8.2.5 nothing in clause 8.2 affects any right of the lessor to recover damages from the lessee in respect of any damage or destruction to which the clause applies.

CLAUSE 9 ACCESS

What are the lessor's rights of access to the property?

- 9.1 The lessee must give the lessor (or anyone authorised in writing by the lessor) access to the property at any reasonable time for the purpose of –
- 9.1.1 inspecting the condition of the property, or how it is being used; or
 - 9.1.2 doing anything that the lessor can or must do under this lease or must do by law; or
 - 9.1.3 viewing the property as a valuer, prospective buyer or mortgagee; or
 - 9.1.4 fixing a notice in a reasonable position on the outside of the property saying that it is for sale; or
 - 9.1.5 viewing the property as a prospective lessee not earlier than 6 months before the lease period ends; or
 - 9.1.6 fixing a notice not earlier than 6 months before the lease period ends in a reasonable position on the outside of the property saying that it is to let; or
 - 9.1.7 inspecting, cleaning or repairing another property or any services to another property.
- 9.2 The lessor must give the lessee at least 2 days written notice for access (except in an emergency). The day of the giving of the notice and any Saturday, Sunday or public holiday on which the property is not open for business are not counted.
- 9.3 The lessor must promptly make good any damage caused to the property and to any of the lessee's belongings which results from exercising these rights.
- 9.4 The lessee must give to the lessor a copy of any notice relating to the property or relating to any neighbouring property immediately after receiving the notice.

CLAUSE 10 TRANSFER AND SUB-LEASE**Can this lease be transferred or the property shared or sub-let?**

- 10.1 The lessee must not transfer this lease without consent.
- 10.2 The lessor can withhold consent only if –
- 10.2.1 the proposed transferee proposes to change the use to which the property is put; or
 - 10.2.2 where the property is a retail shop, the proposed transferee has financial resources or retailing skills inferior to those of the proposed transferor and otherwise the proposed transferee has financial resources or business experience inferior to those of the proposed transferor; or
 - 10.2.3 the lessee has not complied with clause 10.3 and, where the property is a retail shop, clause 10.4.
- 10.3 A request for the lessor's consent to a transfer of lease must be made in writing and the lessee must provide the lessor with such information as the lessor may reasonably require concerning the financial standing and business experience of the proposed transferee.
- 10.4 Where the property is a retail shop, before requesting the consent of the lessor to a proposed transfer of this lease, the lessee must furnish the proposed transferee with a copy of any disclosure statement given to the lessee in respect of this lease, together with details of any changes that have occurred in respect of the information contained in the disclosure statement (being changes of which the lessee was aware or could reasonably be expected to be aware). For the purpose of enabling the lessee to comply with this obligation, the lessee can request the lessor to provide the lessee with a copy of the disclosure statement concerned and, if the lessor is unable or unwilling to comply with such a request within 14 days after it is made, this clause 10.4 does not apply.
- 10.5 Where the lessee has complied with clause 10.3 and where required to do so clause 10.4, and the lessor has not within 42 days or where the *Retail Leases Act 1994* applies 28 days after the request was made or the lessee has complied with paragraphs 41(a) and 41(b) of that Act, whichever is the later, given notice in writing to the lessee either consenting or withholding consent, the lessor is taken to have consented.
- 10.6 The lessee has to pay in connection with any consent the lessor's reasonable legal costs, the reasonable costs of obtaining any mortgagee's consent, the stamp duty and the registration fee for the transfer.
- 10.7 Where the property is a retail shop, the lessee can sub-let, grant a licence or concession, share or part with the possession of the whole or any part of the property or mortgage or otherwise charge or encumber the lessee's estate or interest in this lease only with the written consent of the lessor which can be refused in the lessor's absolute discretion. Otherwise, the lessee cannot do any of these things.

CLAUSE 11 LESSOR'S OTHER OBLIGATIONS**What are the lessor's other obligations?**

- 11.1 So long as the lessee does all the things that must be done by the lessee under this lease the lessor must allow the lessee to possess and use the property in any way permitted under this lease without interference from the lessor, or any person claiming under the lessor or having superior title to the title of the lessor.
- 11.2 The lessor must pay all outgoing for the land or the building of which the property is part when they fall due.
- 11.3 If the property is part of a building owned or controlled by the lessor –
- 11.3.1 the lessor must maintain in reasonable structural condition all parts of the building that the lessee can use under this lease; and
 - 11.3.2 if the property has facilities and service connections shared in common with other persons the lessor must –
 - 11.3.2.1 allow reasonable use of the facilities and service connections including –
 - the right for the lessee and other persons to come and go to and from the property over the areas provided for access;
 - access by the lessee to service connections; and
 - the right for the lessee's customers to park vehicles in any area set aside for customer parking, subject to any reasonable rules made by the lessor.
 - 11.3.2.2 maintain the facilities and service connections in reasonable condition.

- 11.4 Where registration is necessary for the validity of this lease, the lessor must ensure that this lease is registered.
- 11.5 If a consent is needed for this lease, from someone such as a mortgagee or head lessor of the property, then the lessor must get the consent.

CLAUSE 12 FORFEITURE AND END OF LEASE

When does this lease end?

- 12.1 This lease ends –
- 12.1.1 on the date stated in item 3 in the schedule; or
 - 12.1.2 if the lessor lawfully enters and takes possession of any part of the property; or
 - 12.1.3 if the lessor lawfully demands possession of the property.
- 12.2 The lessor can enter and take possession of the property or demand possession of the property if –
- 12.2.1 the lessee has repudiated this lease; or
 - 12.2.2 rent or any other money due under this lease is 14 days overdue for payment; or
 - 12.2.3 the lessee has failed to comply with a lessor's notice under section 129 of the *Conveyancing Act 1919*; or
 - 12.2.4 the lessee has not complied with any term of this lease where a lessor's notice is not required under section 129 of the *Conveyancing Act 1919* and the lessor has given at least 14 days written notice of the lessor's intention to end this lease.
- 12.3 When this lease ends, unless the lessee becomes a lessee of the property under a new lease the lessee must –
- 12.3.1 return the property to the lessor in the state and condition that this lease requires the lessee to keep it in; and
 - 12.3.2 have removed any goods and anything that the lessee fixed to the property and have made good any damage caused by the removal.
- Anything not removed becomes the property of the lessor who can keep it or remove and dispose of it and charge to the lessee the cost of removal, making good and disposal.
- 12.4 If the lessor allows the lessee to continue to occupy the property after the end of the lease period (other than under a new lease) then –
- 12.4.1 the lessee becomes a monthly lessee and must go on paying the same rent and other money in the same way that the lessee had to do under this lease just before the lease period ended (apportioned and payable monthly);
 - 12.4.2 the monthly tenancy will be on the same terms as this lease, except for –
 - clause 4;
 - clauses 5.4 to 5.21 inclusive; and
 - clause 6.2 unless consent has previously been given;
 - 12.4.3 either the lessor or the lessee can end the monthly tenancy by giving, at any time, 1 month written notice to the other expiring on any date; and
 - 12.4.4 anything that the lessee must do by the end of this lease must be done by the end of the monthly tenancy.
- 12.5 Essential terms of this lease include –
- 12.5.1 the obligation to pay rent not later than 14 days after the due date for payment of each periodic instalment (and this obligation stays essential even if the lessor, from time to time, accepted late payment);
 - 12.5.2 the obligations of the lessee in clause 5.1.2 (dealing with outgoing);
 - 12.5.3 the obligations of the lessee in clause 6.1 (dealing with use);
 - 12.5.4 the obligations of the lessee in clause 7 (dealing with repairs);
 - 12.5.5 the obligations of the lessee in clause 10 (dealing with transfer and sub-lease); and
 - 12.5.6 the obligations of the lessee in clause 15 (dealing with GST).

- 12.6 If there is a breach of an essential term the lessor can recover damages for losses over the entire period of this lease but must do every reasonable thing to mitigate those losses and try to lease the property to another lessee on reasonable terms.
- 12.7 The lessor can recover damages even if –
- 12.7.1 the lessor accepts the lessee's repudiation of this lease; or
 - 12.7.2 the lessor ends this lease by entering and taking possession of any part of the property or by demanding possession of the property; or
 - 12.7.3 the lessee abandons possession of the property; or
 - 12.7.4 a surrender of this lease occurs.

CLAUSE 13 GUARANTEE

What are the obligations of a guarantor?

- 13.1 This clause applies if a guarantor of the lessee is named in item 10A in the schedule and has signed or executed this lease or, if this lease is a renewal of an earlier lease, the earlier lease.
- 13.2 The guarantor guarantees to the lessor the performance by the lessee of all the lessee's obligations (including any obligation to pay rent, outgoings or damages) under this lease, under every extension of it or under any renewal of it or under any tenancy and including obligations that are later changed or created.
- 13.3 If the lessee does not pay any money due under this lease, under any extension of it or under any renewal of it or under any tenancy the guarantor must pay that money to the lessor on demand even if the lessor has not tried to recover payment from the lessee.
- 13.4 If the lessee does not perform any of the lessee's obligations under this lease, under any extension of it or under any renewal of it or under any tenancy the guarantor must compensate the lessor even if the lessor has not tried to recover compensation from the lessee.
- 13.5 If the lessee is insolvent and this lease or any extension or renewal of it is disclaimed the guarantor is liable to the lessor for any damage suffered by the lessor because of the disclaimer. The lessor can recover damages for losses over the entire period of this lease or any extension or renewal but must do every reasonable thing to mitigate those losses and try to lease the property to another lessee on reasonable terms.
- 13.6 Even if the lessor gives the lessee extra time to comply with an obligation under this lease, under any extension of it or under any renewal of it or under any tenancy, or does not insist on strict compliance with the terms of this lease or any extension of it or renewal of it or of any tenancy, the guarantor's obligations are not affected.
- 13.7 If an amount is stated in item 10B in the schedule the guarantor's liability under this clause is limited to that amount.
- 13.8 The terms of this guarantee apply even if this lease is not registered, even if any obligation of the lessee is only an equitable one, and even if this lease is extended by legislation.

CLAUSE 14 EXCLUSIONS, NOTICES AND SPECIAL CLAUSES

- 14.1 No covenant or power is implied in this lease by section 84 or 85 of the *Conveyancing Act 1919*.
- 14.2 A document under or relating to this lease is –
- 14.2.1 served if it is served in any manner provided in section 170 of the *Conveyancing Act 1919*; and
 - 14.2.2 served on the lessee if it is left at the property.
- 14.3 This lease is subject to any legislation that cannot be excluded (for example, the *Retail Leases Act 1994*).
- 14.4 In this lease, 'retail shop' means premises to which the *Retail Leases Act 1994* applies.
- 14.5 In this lease 'Director General' has the same meaning as in the *Retail Leases Act 1994*.

CLAUSE 15 GOODS AND SERVICES TAX

Unless item 13B in the schedule has been completed in a way that indicates that this clause is not to apply:

- 15.1 As consideration in whole or in part for a taxable supply the person receiving the supply must pay to the party making the supply an additional amount equal to the amount of GST payable on the supply.
- 15.2 To the extent that the lessee is required to reimburse the lessor in whole or in part for outgoings incurred by the lessor, for the purposes of this lease the amount of the outgoings must be reduced by the amount of any credit or refund of GST to which the lessor is entitled as a result of incurring outgoings.
- 15.3 Outgoings in item 14B in the schedule are to be calculated after deducting any input tax credit to which the lessor is entitled.
- 15.4 For the purposes of this lease GST means a tax in the nature of a supply of goods and services tax levied or imposed by the Commonwealth of Australia.

CLAUSE 16 BANK GUARANTEE

- 16.1 If a number of months appears in item 19 in the schedule, clauses 16.2 to 16.5 apply.
- 16.2 On or before the commencement date of this lease the lessee will deliver to the lessor a guarantee by a bank trading in the State of New South Wales in the form of an unconditional and irrevocable undertaking to pay drawn in favour of the lessor (unlimited as to time) in a form acceptable to the lessor and for an amount equivalent to the number of months referred to in item 19 in the schedule.
- 16.3 The lessor is entitled to claim under the guarantee an amount equal to any moneys due but unpaid by the lessee to the lessor under this lease.
- 16.4 The lessee agrees to vary the amount of the guarantee immediately upon each rent review so that the amount at all times represents the equivalent of the number of months referred to in the schedule.
- 16.5 The lessor will deliver the guarantee (or so much of it as is then held by the lessor) to the lessee on the last of:
 - 16.5.1 the terminating date of this lease;
 - 16.5.2 the expiry date of any holding over under this lease; and
 - 16.5.3 the date that the lessee has no further obligations under this lease or at law.

CLAUSE 17 SECURITY DEPOSIT

- 17.1 If an amount or a number of months appears in item 20 in the schedule, clauses 17.2 to 17.6 apply.
- 17.2 On or before the commencement date of this lease the lessee will deliver the security deposit to the lessor.
- 17.3 The lessor is entitled to deduct from the security deposit an amount equal to any monies due but unpaid by the lessee to the lessor under this lease.
- 17.4 Where the property is a retail shop, the security deposit will be held in accordance with Section 16C of the *Retail Leases Act 1994*. The lessee will not make an application to the Director General seeking the return of the security deposit (or so much of it as is then held by the Director General) until the later of:
 - 17.4.1 the terminating date of this lease;
 - 17.4.2 the expiry date of any holding over under this lease; and
 - 17.4.3 the date that the lessee has no further obligations under this lease or at law.
- 17.5 Where the property is other than a retail shop the security deposit (or so much of it as is then held by the lessor) will be returned to the lessee on the later of the dates as specified in clause 17.4.
- 17.6 The lessee agrees to vary the amount of the security deposit immediately upon each rent review so that it represents the equivalent of the number of months referred to in the schedule.

CLAUSE 18 STRATA CONVERSION

- 18.1 "Owners corporation", "owner", "strata scheme", "lot" and "parcel" where used in this lease have the meanings given under the *Strata Schemes Management Act 1996* and the *Strata Schemes (Freehold Development) Act 1973*.

- 18.2 “Strata Acts” means the *Strata Schemes Management Act 1996* and the *Strata Schemes (Freehold Development) Act 1973*, and includes any amending Acts, rules, regulations, ordinances, by-laws, statutory instruments, orders or notices now or hereafter made under those Acts.
- 18.3 “Strata conversion” means a subdivision of the property under the *Strata Schemes (Freehold Development) Act 1973* or the *Community Land Development Act 1989* or the *Community Land Management Act 1989* or other legislation permitting such subdivision.
- 18.4 Strata Titles
- 18.4.1 Lessee consents to registration of strata plan
- 18.4.1.1 By its entry into this lease the lessee acknowledges that the lessor can register a strata plan, a strata schemes plan, a strata plan of subdivision, a strata plan of consolidation or a building alteration plan insofar as any of these may relate to the property, the Building or the land. The lessor will provide the lessee with copies of the proposed strata plan and associated documentation for the lessee’s approval, which approval will not be unreasonably withheld.
- 18.4.1.2 Provided the lessee consents to the strata conversion as per clause 18.4.1.1 then within 7 days of written request by the lessor the lessee will sign and return to the lessor any consents or other documents necessary to enable the lessor to carry out the strata conversion and will make no objection or claim for compensation in relation to the strata conversion.
- 18.4.2 Compliance with the Strata Acts and by-laws:
- 18.4.2.1 **(Covenant):** The lessee and any and all persons acting by, through or under it or with its authority express or implied shall comply with so many of the provisions of the Strata Acts and the by-laws and all lawful orders, motions and directives under the Strata Acts as may be applicable to the exercise of the lessee’s rights and obligations under the provisions elsewhere contained in this lease.
- 18.4.2.2 **Not to prejudice interests of owners corporation.** Without the prior written consent of the owners corporation, the lessee shall not do any act, matter or thing under the exercise of its rights and obligations elsewhere contained in this lease or permit or allow any act, matter or thing to be done which shall or may:
- increase the rate of premium payable by the owners corporation under any policy of insurance taken out by the owners corporation; or
 - invalidate, avoid or suspend the operation of any such policy of insurance or otherwise prejudice the owners corporation rights under any such policy.
- 18.4.2.3 Upon the occurrence of any of the matters previously referred to the lessee shall:
- pay to the lessor or such other person responsible for payment any amounts payable to the owners corporation as a consequence of any such matters;
 - pay to the lessor for and on behalf of the owners corporation any amounts payable by the owners corporation as a consequence of any such matters and not the subject of clause 18.4.2.2; and
 - pay to the lessor for and on behalf of the owners corporation the amount of any and all losses and damages arising from the occurrence of any such matters.
- 18.4.2.4 **(Indemnity):** The lessee shall indemnify the lessor for any loss or damage suffered by the lessor if the lessee or the lessee’s employees fail to comply with the obligations as to conduct imposed upon the lessee or the lessee’s employees by this lease or by reason of the Strata Acts.
- 18.4.3 If the strata conversion occurs:
- 18.4.3.1 any reference in this lease will be deemed to be a reference to the buildings comprised in the registered plan or plans of which the property forms part;
- 18.4.3.2 any levies or other monies payable to the owners corporation will be payable by the lessee with the exception of any contribution to a sinking fund or special levy; and
- 18.4.3.3 this lease will be deemed to be amended in any respect that is necessary to ensure that this lease reflects that the strata conversion has been carried out.

IMPORTANT NOTES

The following notes are for guidance and do not form part of this lease.

If you are a lessor, a solicitor will prepare this lease for you.

If you are a lessee, a solicitor can advise you about it.

1. This document creates legal rights and legal obligations.
2. Failure to register a lease can have serious consequences.
3. If an option for renewal is not exercised at the right time it will be lost.
4. The lessee can exercise an option for renewal even if there has been a breach of this lease in a case where section 133E of the *Conveyancing Act 1919* applies. The lessor must give a prescribed notice within 14 days after the option is exercised if the lessor wants to rely on the breach to prevent the exercise of the option.
5. The Law Society of New South Wales is not to be responsible for any loss resulting from the use of this lease as printed whether authorised or not.

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I certify that this and the preceding twelve pages are in exactly the same wording as Annexure B of the copyright Law Society Lease.

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Solicitor for the lessor