

- (b) provide evidence of payment of the **outgoings** to the **landlord**, on demand.

4.2 SERVICE COSTS

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

4.3 LEGAL COSTS

- (a) The **landlord** must pay their own costs in relation to the negotiation, preparation, and completion of this **lease**.
- (b) The **tenant** must pay:
 - (i) their own costs in relation to the negotiation, preparation, and completion of this **lease**; and
 - (ii) all stamp duties assessed on this **lease** (regardless of when the duty is assessed); and
 - (iii) registration fees (including registration fees on the exercise of the option); and
 - (iv) survey fees; and
 - (v) the **landlord's** costs:
 - (A) if the **landlord** is made a party to any litigation commenced by or against the **tenant** without default on the part of the **landlord**; and
 - (B) (purposefully deleted) ; and
 - (C) associated with the exercise of an **option period** including the preparation, execution and stamping of the new **lease** unless the recovery of this cost is prohibited by a law in the **State**; and
 - (D) in relation to an assignment, subletting or surrender of this **lease** or to any variation to this **lease** requested by the **tenant** or to any attempted variation to this **lease** requested by the **tenant**; and
 - (E) in considering any request for the **landlord's** consent required under this **lease**; and
 - (F) in relation to the signing of documentation required by a mortgagee of this **lease** or the **tenant's business**; and
 - (G) resulting from the default of the **tenant**.



4.4 INTEREST ON LATE PAYMENTS

- (a) The **tenant** must pay interest on any monies that are due and payable under this **lease** and have not been paid within 14 days from the due date.
- (b) Interest is charged at the rate of 2% over the rate set by the Penalty Interest Rates Act 1983, but this will not constitute a breach of the Lease.
- (c) Interest is payable from the date that the monies were due until the date that the monies are actually paid.
- (d) This clause does not prevent the **landlord** from exercising any other right under this **lease**.

4.5 TENDER AFTER DETERMINATION

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

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

5. ASSIGNMENT AND OTHER PROHIBITED DEALINGS

5.1 PROHIBITED DEALINGS

The **tenant** must not **dispose** without the written consent of the **landlord**.

5.2 CONSENT TO ASSIGNMENT

Notwithstanding clause 5.1, the **landlord** will consent to an assignment of the **lease** from the **tenant** to the **tenant's** proposed assignee and will release the **tenant** from the **tenant's** obligations and any indemnity under the **lease** if :

- (a) the **tenant** has agreed to transfer to the proposed assignee the **business name**; and
- (b) the **tenant** introduces the proposed assignee (or its directors if a company) to the **landlord**; and
- (c) the **tenant** provides the **landlord** with either
 - (i) written confirmation from the proposed assignee's bank or other lending institution approving a loan to the proposed assignee to fund in some way the purchase of the **tenant's business** and/or to finance in some way the operation of the **tenant's business**; or
 - (ii) if existing finance is not required for the purchase of the **tenant's business** and/or to finance in some way the operation of the **tenant's business** then, confirmation by way of statutory declaration from the

proposed assignee that it has sufficient resources to fund the purchase and operate the **tenant's business** without external finance;

as evidence that the proposed assignee has the financial resources to purchase and operate the **tenant's business**;

- (d) any default has been remedied by the **tenant** or waived by the **landlord**; in writing; and
- (e) the proposed assignee, the **tenant** and any guarantor(s) acceptable to the **landlord** under clause 5.7, execute an instrument whereby:
 - (i) the **tenant** assigns its rights under the **lease** to the proposed assignee;
 - (ii) the proposed assignee agrees with the **landlord** to be bound by the **lease** as if the proposed assignee were the **tenant**; the guarantor(s) acceptable to the **landlord** under clause 5.7 guarantee the obligations of the proposed assignee under the **lease** for the **term** and any renewal or renewals of the **lease** and indemnify the **landlord** in respect of any loss suffered by the **landlord**.

The instrument will be prepared by the **tenant** and will include an obligation by the proposed assignee to indemnify the **landlord** as provided in this **lease** and a power of attorney in the same form as in this **lease**.

The instrument will be stamped (if required in the **State**) by the **tenant's** solicitors at the expense of the **tenant**; and

- (f) the proposed assignee provides evidence that all insurances required under Clause 8 have been taken out; and
- (g) the **competent authority** that determines whether or not to approve a transfer of the **liquor licence** will approve a transfer of the **liquor licence** to the proposed assignee if the **lease** is assigned.

5.3 CONSENT TO ANYTHING OTHER THAN ASSIGNMENT

Unless prohibited by law in the **State**, where any request is made to the landlord for consent to any dealing referred to in clause 5.1 other than an assignment of this lease, the landlord may refuse to give consent or may withhold consent at its absolute discretion, without giving the tenant any reasons.

5.4 CHANGE IN CONTROL OF TENANT

- (a) If the tenant is a corporation, the tenant must notify the landlord if any persons who own a majority of shares in the corporation disposes of those shares (including any transfers by inheritance);
- (b) Upon receiving notice from the tenant the landlord may deem the change to be an assignment of this lease.



- (c) This clause does not apply if the tenant is a corporation which is listed on a recognised Stock Exchange in Australia or at least 80% of its voting shares are owned by another company which is so listed.

5.5 GUARANTEES ON ASSIGNMENT OR CHANGE IN CONTROL OF TENANT

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

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

5.6 TENANT'S OPTION

- (a) the landlord must, prior to selling the Licensed Restaurant and Mews to any party that is not related to the landlord, offer the Licensed Restaurant and Mews to the tenant on the same terms and conditions and at the same price as any proposed sale unless the proposed sale is by way of public auction when the tenant will have the opportunity to bid at such auction.
- (b) the tenant has 14 days from receiving the landlord's offer to accept it in writing;
- (c) if the tenant accepts the landlord's offer:
 - (i) the parties must enter into a contract immediately; and
 - (ii) the contract is to be prepared by the landlord's solicitors; and
 - (iii) the contract must incorporate the terms of the offer; and
 - (iv) the contract must include any other reasonable terms applying to the sale of a freehold Licensed Restaurant and Mews business.
- (d) if the tenant does not accept the offer, the landlord may dispose of the Licensed Restaurant and Mews on the same terms and conditions as offered to the tenant.

5.7 ASSIGNMENT BY LANDLORD

If the landlord sells the Licensed Restaurant and Mews to any person other than the tenant, the landlord must obtain from the purchaser a covenant in favour of the tenant that:

- (a) the purchaser will recognise and be bound by any option period and any further option periods and the other terms of this lease as the landlord; and
- (b) if the purchaser disposes of the Licensed Restaurant and Mews to any other person other than the tenant then the purchaser will obtain a covenant from the subsequent purchaser in terms similar to this Clause whereupon the assigning landlord shall be



released from all liability to the tenant in relation to the grant of options to extend this lease unexercised.

6. USE OF THE LICENSED RESTAURANT AND MEWS

6.1 WHAT THE TENANT MUST DO

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

- (a) Permitted Use: use the **Licensed Restaurant and Mews** for the **permitted use** only; and
- (b) Trading Hours: keep the **Licensed Restaurant and Mews** open for business each and every day of the **term** subject to any restrictions imposed by law; and
- (c) Operation of Business: conduct the **tenant's business** at all times in good faith, in a reputable manner and to the best of the **tenant's** ability; and
- (d) Compliance with Laws: comply with all laws in relation to the **Licensed Restaurant and Mews**, the **tenant's business** or the **permitted use**; and
- (e) Licences/Permits: take out and maintain all licences, permits and registrations required by any **competent authority** for the carrying on of the **tenant's business**; and
- (f) Air Conditioning Equipment:
 - (i) comply with and observe any requirements of the **landlord** and any person contracted to maintain and service the **air conditioning equipment** and any in ground swimming pool; and
 - (ii) promptly notify the **landlord** of any fault in the operation of the **air conditioning equipment** or in ground swimming pool; and
- (g) Services: keep and maintain the roof guttering, spouting, downpipes, waste pipes, drains, water supply, plumbing, conduits and other equipment or services in a clear and free flowing condition. If necessary the **tenant** must employ licensed tradesmen to clear any blockages; and
- (h) Grease Traps: have all grease traps in the **Licensed Restaurant and Mews** serviced regularly; and
- (i) Refuse: cause all waste, trash, refuse, food and other garbage to be removed daily outside of normal trading hours; and
- (j) Infectious Diseases: where any infectious disease occurs in the **Licensed Restaurant and Mews** which requires notification under legislation:
 - (i) give the required notices to the **competent authority** and give immediate notice to the **landlord**; and



- (ii) thoroughly fumigate and disinfect the **Licensed Restaurant and Mews**; and
- (k) Fire Safety:
 - (i) comply with all laws and requirements of any **competent authority** relating to fire safety; and
 - (ii) comply with any notice given by the **landlord** in respect of fire safety (including the provision and maintenance of equipment); and
- (l) Signs: only use advertisements or signs that are usual for the **permitted use** and that comply with the law or the requirements of a **competent authority**; and
- (m) AAA Report:
 - (i) ensure that a **AAA Report** is prepared each year;
 - (ii) provide the **landlord** with a copy of each **AAA Report** received by the **tenant**;
 - (iii) comply with all requirements and recommendations contained in the **AAA Report** within the time specified or, if no time is specified, within a reasonable time;

*(To remove any doubt the **tenant** does not need to carry out any work to the physical structure of the **Licensed Restaurant and Mews** that is required or recommended in the **AAA Report**, unless the structural work is required because of the **tenant's** neglect and/or failure to comply with any provision in this **lease**)*

- (n) Tenant to Provide Financial Details
 - (i) Upon Request to Transfer the Lease

If the Tenant gives notice to the Landlord of its intention to transfer the Lease, the Tenant must at the time of making the request supply to the Landlord all such financial information relevant to the conduct of the business conducted at the premises by the Tenant (including the gross and net takings of the business) as the Landlord may reasonably request of the Tenant in order to assist the Landlord in determining the capacity of the Transferee of the Lease to operate the business conducted upon the premises in a financially viable manner. The Tenant hereby warrants to the Landlord that all such information provided in accordance with this clause imposes an additional requirement upon the Tenant in relation to the matters set out in printed Clause 5.2 hereof. Failure by the Tenant to observe the provisions of this clause constitute grounds for the Landlord to refuse consent to the transfer of the Lease.



(ii) **Upon Renewal of this Lease**

If the Tenant gives notice to the Landlord of its intention to renew this Lease in accordance with the terms contained in this Lease, the Tenant must as soon as possible thereafter supply the Landlord with all such financial information relating to the business conducted on the premises by the Tenant, or any entity in which the Tenant holds an interest, as the Landlord may reasonably require in writing of the Tenant in order to assist in determining the continuing financial viability of the business conducted on the premises by the Tenant. The Tenant must provide such information promptly, and the Tenant hereby warrants that all such information so provided must be true and fair. If the Tenant fails to promptly comply with this Clause, such failure shall be deemed to be a breach of an essential term of this Lease.

- (o) **Driveways and Parking Areas:** maintain and repair all driveways and parking areas.
- (p) **Animals:** not keep any animal on the demised premises or permit the same to remain on the demised premises without first obtaining the written consent of the landlord which consent may be withheld or granted upon conditions entirely at the discretion of the landlord.
- (q) **Pest control:** not less than once during each year of the term and any renewal at the cost of the tenant have the premises sprayed by a reputable Pest Control Company so as to control spiders and other pests on the property. The tenant must within seven (7) days of the date upon which the premises are sprayed provide the landlord with a copy of the Certificate issued by the Pest Control Company.
- (r) **Compliance with Fire Regulations:** comply with insurance, sprinkler and/or fire alarm regulations in respect of the demised premises and/or any partitions with may be erected by the tenant therein and the tenant will pay to the landlord the cost or any alterations to the sprinklers and/or fire alarm installations which may become necessary by reason of the non-compliance by the tenant with the recommendations of the Insurance Council of Australia or the requirements of the insurer of the demised premises.
- (s) **Paint and Wall Paper:** as and when reasonably required and at intervals of not more than five (5) years and at his own cost and expense and in a proper and workmanlike manner paint or wall paper walls, ceilings and other parts of the exterior (the interior of the premises every ten (10) years) of the demised premises which have at any time been previously painted or wall papered **PROVIDED** that the first painting and/or wall papering of the exterior of the demised premises shall occur not later than the first six (6) months of the fifth year of the term hereof. The Tenant must not alter the style and standard of finish of any part of the interior or exterior of the premises or alter the colour scheme of the interior or exterior of the premises without the written consent of the Landlords.



6.2 WHAT THE TENANT MUST NOT DO

The tenant must not

- (a) **Business Name:** without the consent of the **landlord**:
 - (i) **dispose** of, alter, or change the **business name**; or
 - (ii) use the **business name** as a company name or in connection with a corporation.
- (b) **Annoying Conduct:** carry on any annoying, noxious, or offensive conduct or any illegal business occupation or practice; or
- (c) **Nuisance:** do anything which is or becomes an annoyance, nuisance, grievance or disturbance to the **landlord**, persons lawfully in the **Licensed Restaurant and Mews** or occupiers or owners of any neighbouring premises; or
- (d) **Source of Power:** use any form of light, power or heat other than electric current save where the **Licensed Restaurant and Mews** at the **commencement date** also has gas and/or oil supplied to it. However the **tenant** may use alternative methods of power or lighting (other than an exposed flame) during any period of power failure or power restrictions; or
- (e) **Electrical Equipment:** install or connect any electrical equipment in the **Licensed Restaurant and Mews** that may overload the cables, switchboards or sub-boards through which the electricity is conveyed to the **Licensed Restaurant and Mews** without the **landlord's** prior consent; or
- (f) **Landlord's Property:** use the **landlord's property** for any purpose other than those purposes for which they were designed or constructed; or
- (g) **Inflammable Substances:** bring on or store in the **Licensed Restaurant and Mews** any explosives, inflammable or corrosive fluids or chemicals. However the **tenant** may store in the **Licensed Restaurant and Mews**, confined in proper containers, those fluids or chemicals that are normally used in the conduct of the **Licensed Restaurant and Mews**.



7. MAINTENANCE REPAIR AND ALTERATIONS

7.1 WHAT THE TENANT IS RESPONSIBLE FOR

The **tenant** must:-

- (a) keep the **Licensed Restaurant and Mews** (including the exterior facade of the **building**, exterior and interior windows and doors and all plate glass, glass fixtures, carpets and signage and any swimming pool) and the **landlord's property** clean and in good repair; and
- (b) keep the **tenant's property** clean and in good repair; and
- (c) repair any damage to the **Licensed Restaurant and Mews** and the **landlord's property** caused by the **tenant** or the **tenant's agents**; and

replace damaged plate glass and other glass in the **building** with glass of similar quality; and

replace anything in the **Licensed Restaurant and Mews** that can no longer be repaired or has otherwise come the end of its useful life; and

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

*Items the **tenant** must replace*

*drains;
guttering;
underground pipes;
tiles (either wall, floor or ceiling) where retiling is involved as distinct from replacing sundry broken and cracked tiles;
built in vanity units;
built in cupboards, desks, port racks and cabinets;
hot water units;
air conditioning ducting;
toilet cisterns and pedestals;
shower systems including shower screens.
light bulbs and fittings;
moveable items (chairs and tables);
carpets; and
curtains and blinds
swimming pool filter unit and connecting pipework*

*If the **landlord** is obliged by any law in the **State** to attend to the repair of the items then the **tenant** shall reimburse the **landlord** for the cost of those repairs.*

- (f) maintain and repair the **services**; and
- (g) attend to all things required to ensure that the **AAA Rating** is the rating given to the **Licensed Restaurant and Mews** by **AAA** at all times and if the **AAA Rating** is not



given to the **Licensed Restaurant and Mews** by **AAA** at any time then to do all things that are required immediately to ensure that the **Licensed Restaurant and Mews** is given the **AAA Rating**.

- (h) Whilst **AAA** continue to publish a **AAA Rating** the **tenant** must without limiting the **tenant's** obligations otherwise under this sub-clause or under sub-clause 7.2 redecorate the **Licensed Restaurant and Mews** when reasonably required by the **landlord** to do so provided that in doing so the **AAA Rating** is maintained provided however that the **tenant** is not obliged to redecorate more frequently than once in each period of seven years from the **date of commencement** of the initial term of the **lease** unless more frequent redecoration is required to attain or maintain the **AAA Rating**.

7.2 IF THE AAA RATING CEASES

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

- (a) at reasonable times throughout the term or any extension thereof and at least every five (5) years:
 - (i) redecorate the **Licensed Restaurant and Mews**; and
 - (ii) paint, repaint, recover, clean or otherwise treat with materials all of the interior and exterior of the **building**; and
- (b) maintain the gardens and landscaping on the **land**. If required in the **landlord's** reasonable opinion, the **tenant** must restore and replace the gardens and landscaping.

7.3 WHAT THE TENANT IS NOT RESPONSIBLE FOR

Despite the provisions of clauses 7.1 and 7.2, the **tenant** is not responsible for:

- (a) structural repairs to the **Licensed Restaurant and Mews** or the **landlord's property**, unless the repair is required because of any act or negligence of the **tenant** or the **tenant's agents**; and
- (b) inherent defects to the property that could not be found on the date on which the **tenant** first took possession of the **Licensed Restaurant and Mews**.

7.4 WHAT THE LANDLORD IS RESPONSIBLE FOR

- (a) The **landlord** must:
 - (i) ensure that the **Licensed Restaurant and Mews** and the **landlord's property** are kept in a good structural state and condition; and
 - (ii) maintain the **Licensed Restaurant and Mews** and the **landlord's property** where that maintenance is required as a result of:



- (A) inherent defects to the property that could not be found on the date on which the **tenant** first took possession of the **Licensed Restaurant and Mews**;
 - (B) having to comply with any law in a **State** that specifically imposes the requirement on the **landlord**
- (b) For the purposes of this clause **landlord's property** includes any property which comes within a depreciation allowance under the *Income Tax Assessment Act 1997* ("Tax Act") or which is "qualifying expenditure within the meaning of the Tax Act or which is, in the absence of other factors capable of being depreciated or capable of being "qualifying expenditure" under the Tax Act in the accounts of the **landlord**.

7.5 NOTICE OF DAMAGE

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

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

7.6 TENANT'S ALTERATIONS

- (a) The **tenant** must not make any additions or alterations to the **Licensed Restaurant and Mews** without the prior consent of the **landlord**;
- (b) The **tenant** must:
 - (i) provide the **landlord** with plans, specifications and any other information about the proposed work that the **landlord** may reasonably require; and
 - (ii) pay the **landlord's** reasonable costs of considering the proposed addition or alteration; and
 - (iii) obtain any necessary approvals or permits from the **competent authority**; and
 - (iv) use materials of the same or similar quality as those used when the **Licensed Restaurant and Mews** was constructed or last redecorated; and
 - (v) ensure that in doing the works, including transporting material to and from the **Licensed Restaurant and Mews**, no damage is caused to the **Licensed Restaurant and Mews** and that there is no material interference to the orderly operation of the **Licensed Restaurant and Mews** or to the efficient operation of the **services**.
- (c) If the **tenant** acts strictly in accordance with this clause 7.6 then the **tenant** does not have to reinstate those parts of the **Licensed Restaurant and Mews** on which works are done when the **tenant** vacates the **Licensed Restaurant and Mews**.



7.7 STRUCTURAL MAINTENANCE AND REPAIR

If the Retail Leases Act 2003 applies, the landlord must perform the obligations imposed on it by Section 52 of that Act.

8. INSURANCES

8.1 MAINTAIN INSURANCES

The **tenant** shall during the term of this lease and any renewal thereof, at the option of the landlord, either maintain the following insurances or reimburse the landlord in respect of all premiums paid by the landlord under insurance policies in respect of the following risks:

- (a) damage to or destruction of the demised premises to their full replacement value as reasonably determined by the landlord from time to time caused by fire, lightening, storm and tempest, explosion, riots and civil commotion, strikes and malicious damage, earthquake, impact by vehicles, aircraft and articles dropped therefrom, internal water and such other risks as the landlord determines;
- (b) removal of debris;
- (c) breakdown of plant and equipment of the landlord installed in the demised premises;
- (d) public risk insurance for the amount set out in the **particulars**;
- (e) plate glass insurance for its replacement value; and

8.2 REQUIREMENTS FOR INSURANCES

The **tenant** must:

- (a) take out the insurances with reputable insurers; and
- (b) ensure that the insurances (except workers compensation and loss of income insurance) are in the names of the **tenant** and the **landlord** and, if asked, any other person for their respective rights and interests; and
- (c) give the **landlord** a copy of the certificates of insurance, if asked; and
- (d) pay each premium, additional premiums and any excess or other payments by the due date and give the **landlord** a copy of the receipts, if asked; and



- (e) immediately notify the **landlord** if an event occurs which gives rise to a claim under or which could prejudice a policy of insurance or if any policy of insurance is cancelled; and
- (f) pay any increases in premiums incurred by the **landlord** where the increases are caused by the **tenant's** use of the **Licensed Restaurant and Mews**.

8.3 TENANT NOT TO PREJUDICE

The **tenant** must not:

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

8.4 PROCEEDS OF INSURANCE

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

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

8.5 RISK

The **tenant** uses and occupies the **Licensed Restaurant and Mews** at the **tenant's** own risk.

8.6 INDEMNITY

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

8.7 LANDLORD NOT LIABLE

- (a) The **landlord** is not liable for loss, damage, injury, or death of any person except that caused by the negligence or default of the **landlord** or the **landlord's agents**.



- (b) The **landlord** is not liable for any damage or loss caused by the neglect or default of the **landlord** or the **landlord's agents** (despite any law to the contrary) for failing to do any thing in respect of the **Licensed Restaurant and Mews** unless the **tenant** has given notice in writing to the **landlord** of such thing and the **landlord** has not rectified such thing within a reasonable time.

8.8 CONTINUING OBLIGATION

Each indemnity in this **lease** is:

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

9. LANDLORD'S OBLIGATIONS

9.1 QUIET ENJOYMENT

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

- (a) allow the **tenant** to occupy the **Licensed Restaurant and Mews** without interruption or disturbance from the **landlord** or the **landlord's agents**; and
- (b) take reasonable action to ensure that the **services** that exist at the date the **tenant** first takes possession of the **Licensed Restaurant and Mews** continue to be made available to the **Licensed Restaurant and Mews**.

9.2 LANDLORD TO PURCHASE TENANT'S PROPERTY AT EXPIRATION

- (a) Prior to the **end of the lease** where no renewal or new lease applies, the **landlord** may consider purchasing the **tenant's property** and if the **landlord** wishes to do so the **landlord** must give notice to the **tenant** at least one month prior to the **end of the lease**.
- (b) The purchase price of the **tenant's property** is to be agreed on by the **landlord** and the **tenant**. If the purchase price can be agreed within 7 days from the date of the **landlord's** notice then the **landlord** will purchase the **tenant's property** for that agreed price.
- (c) If the purchase price can not be agreed within 7 days from the date of the notice then a valuer nominated by the President of the Law Society in the **State** at the request of either the **landlord** or the **tenant** will be appointed to determine a price. The parties shall ensure that the said President nominates a valuer who can make a valuation prior to the **end of the lease**.
- (d) The valuer's decision will be final and is not to be disputed by either party.



- (e) The costs of the valuation must be paid equally by the **landlord** and the **tenant**.
- (f) The valuer must:
 - (i) be a member of the Australian Institute of Valuers; and
 - (ii) have a minimum of 5 years experience in valuing property similar to the **tenant's property**; and
 - (iii) value the **tenant's property** on their existing use in situ in the **Licensed Restaurant and Mews** and as a going concern; and
 - (iv) act as an expert and not an arbitrator.
- (g) Upon being notified of the price determined by the valuer the **landlord** may within 7 days thereafter elect to purchase the **tenant's property** for the price determined by the valuer. This can be done by notice to the **tenant** within that 7 day period. If the **landlord** fails to elect in accordance with this clause then there is no agreement for the purchase of the **tenant's property** and the **tenant** shall then make immediate arrangements to remove the **tenant's property** from the **Licensed Restaurant and Mews** at the end of the lease.
- (h) If there is an agreement for the purchase of the **tenant's property** then in either scenario:
 - (i) The **tenant** will warrant that it is the sole owner of the **tenant's property** and the **landlord** will be acquiring it free of encumbrances.
 - (ii) The **landlord** must pay the purchase price to the **tenant** within 14 days of the price being agreed or determined as the case may be;
 - (iii) The **landlord** may deduct the following amounts from the purchase price;
 - (A) any amount payable by the **tenant** under this lease; and
 - (B) all reasonable costs and expenses incurred by the **landlord** as a result of the **tenant's** default;
 - (iv) The risk and ownership of the **tenant's property** passes to the **landlord** upon payment of the purchase price to the **tenant**; and
 - (v) If the parties agree to have a formal contract prepared for the purchase then that contract shall be prepared by the solicitors for the **landlord** at the joint cost of the **landlord** and **tenant**.
- (i) The **landlord** must not use the **tenant's property** until the purchase price has been paid to the **tenant**.
- (j) This clause 9.2 does not apply where the **tenant** has vacated or abandoned the **Licensed Restaurant and Mews** or the **landlord** has exercised its right to re enter and terminate this lease or has terminated this lease by notice.

9.3 MORTGAGEE CONSENT

The Landlord must give to the Tenant the written consent to this Lease of all Mortgagees and/or Debenture Holders whose interest would otherwise have priority over this Lease.



10. LANDLORD'S RIGHTS

10.1 ENTRY BY LANDLORD

The **landlord** may:

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

10.2 NOTICE AND DISTURBANCE

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

10.3 ANTECEDENT BREACHES

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

10.4 ENTRY BY LANDLORD ON ABANDONMENT

- (a) If the **tenant** vacates or abandons the **Licensed Restaurant and Mews** during the **term** there will not be a re-entry, forfeiture or waiver of the **landlord's** rights to recover in full all the rent and other moneys payable under this **lease** if the **landlord** or the **landlord's agents**:
 - (i) accepts the keys; or



- (ii) enters the **Licensed Restaurant and Mews** for the purpose of an inspection; or
 - (iii) enters the **Licensed Restaurant and Mews** for the purpose of showing the **Licensed Restaurant and Mews** to prospective tenants; or
 - (iv) enters the **Licensed Restaurant and Mews** for the purpose of advertising the **Licensed Restaurant and Mews** for re-leasing.
- (b) This **lease** will continue in full force and effect until the date from which a new tenant or licensee actually commences to occupy the **Licensed Restaurant and Mews**, or the **expiry date**, whichever is the earlier. Any entry by the **landlord** until that date is deemed to be an entry by the licence of the **tenant**.
- (c) This clause does not apply if the **landlord** has:
- (i) by written notice, accepted the **tenant's** surrender of the **lease**; or
 - (ii) served a formal notice of forfeiture on the **tenant**; or
 - (iii) served a formal notice of re-entry on the **tenant**.

11. DEFAULT

11.1 ESSENTIAL TERMS

An essential term is each of the **tenant's** obligations under clauses 3, 4, 5, 6.1, 6.2, 7.1, 7.2, 7.6, 8 and 12.2.

11.2 DEFAULT

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

- (a) it breaches an essential term of this **lease**; or
- (b) it fails to pay any money within 7 days of the due date; or
- (c) it repudiates its obligations under this **lease**; or
- (d) an **insolvency event** occurs in respect of the **tenant**; or
- (e) its interest under this Lease is attached or taken in execution under any legal process; or
- (f) it does not comply with any other term of this Lease within a reasonable time after receiving notice from the **Landlord** to do so; or
- (g) the **Licensed Restaurant and Mews** is damaged or destroyed and:
 - (i) the damage or destruction was caused or contributed to by the **tenant** or the **tenant's agents**; or



- (ii) a policy of insurance in connection with the **Licensed Restaurant and Mews** has been made void or payment of policy money has been refused by the insurer because of an act or omission of the **tenant** or the **tenant's agents**; or
- (h) without the consent of the **landlord**, the **tenant** or a **guarantor** takes action to reduce its capital or passes a resolution referred to in Section 188(2) of the Corporations Law.
- (i) If notice of default is required to be served by the **landlord** on the **tenant** or on any other person by any law in the **State** then this will be done and if any minimum period of notice is required under that law then the **landlord** shall only be required to give that minimum period of notice.

11.3 LANDLORD'S RIGHT TO TERMINATE

The **landlord** may, if the **tenant** is in default, and has been given written notice of that default but has not rectified the default within fourteen (14) days of the date of the written notice:

- (a) terminate this **lease** by re-entering the **Licensed Restaurant and Mews** (without further notice if that is not prohibited by a law in the **State**);
- (b) terminate this **lease** by notice; or
- (c) convert this **lease**, by notice to the **tenant**, into a tenancy which may be terminated at will by the **landlord** but not the **tenant**. In this case, the **tenant** will remain bound under this **lease**.

11.4 INDEMNITY FOR TERMINATION

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



- (iii) the **landlord** terminating this **lease**; or
- (iv) the **landlord** accepting the **tenant's** repudiation; or
- (v) the **tenant** abandoning or vacating the **Licensed Restaurant and Mews**; or
- (vi) the conduct of either party constituting a surrender by operation of law.

11.5 WHAT HAPPENS TO THE TENANT'S PROPERTY?

- (a) If the **tenant** vacates or abandons the **Licensed Restaurant and Mews** during the **term** or the **landlord** terminates the **lease** by re entering or by giving notice then all of the **tenant's** interest in the **tenant's property** is transferred to the **landlord**.
- (b) The Landlord may at its discretion:
 - (i) have any of the **tenant's property** stored in a public warehouse or elsewhere at the cost of the **tenant**;
 - (ii) give the **tenant's property** back to the **tenant**; and/or
sell any of the **tenant's property** without liability to the **tenant** for any loss.

If the **landlord** decides to sell any of the **tenant's property** then the **landlord** must sell by public auction the **tenant's property** which remain and distribute the proceeds as follows:

- (iv) in payment of the expenses of the auction;
 - (v) in satisfaction of all amounts due, including damages and amounts due other than under this **lease**, by the **tenant** to the **landlord**;
 - (vi) the balance to the **tenant**.
- (c) The **landlord** must advertise the auction:
 - (i) in a newspaper circulating in the area of the **Licensed Restaurant and Mews**;
 - (ii) on at least three occasions;
 - (iii) within two months of the sale;

and, if the **landlord** complies with these requirements, the **landlord** may sell each of the **Interests** without reserve.

- (d) The **tenant** will have no claim against the **landlord** based on an allegation that the sale prices of any of the **tenant's property** were not high enough.



- (e) The **tenant** appoints the **landlord** as its attorney under power for completing the sale of any of the **tenant's property** sold at the auction.
- (f) The **landlord** may purchase any of the **tenant's property** offered for sale at the auction.
- (g) If the **tenant's property** includes money, the **landlord** may include that money in the proceeds of sale rather than offering it for sale at the auction.
- (h) If any damage would result from the removal of any of the **tenant's property** the **landlord** may retain that item and pay into the proceeds of sale an amount equivalent to the likely sale price, if it had been sold at a public auction, as assessed in writing by a person carrying on a business which includes the auctioning of chattels.
- (i) The **landlord** may delay the auction or the distribution of the proceeds of the auction until the amounts due under sub-clauses 11.5 (b), (c) and (h) have been ascertained.

12. END OF THE LEASE

12.1 TENANT'S OBLIGATIONS

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

- (a) Tenant to vacate: vacate the **Licensed Restaurant and Mews**; and
- (b) Condition of Licensed Restaurant and Mews: leave the **Licensed Restaurant and Mews** in the same condition as that required under Clause 7.1 and 7.2; and
- (c) Transfer Business Name: transfer the **business name** to the **landlord** or a person nominated by the **landlord**; and
- (d) Keys: give the all keys held by the **tenant**, the **tenant's agents**, or any other person to the **landlord**.
- (e) Trading Figures: provide to the **landlord** the full trading figures for the **Licensed Restaurant and Mews** for the last two years ended the 30th June prior to the end of the **lease**.
- (f) Prepaid deposits: pay to the **landlord** all prepaid deposits held by the **tenant** in respect of accommodation to be provided after the end of the lease date.

12.2 THE TENANT'S PROPERTY

The **tenant** must not, at the **end of the lease**, remove the **tenant's property** from the **Licensed Restaurant and Mews**.



12.3 RISK IN TENANT'S PROPERTY

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

13. LIQUOR LICENCE

13.1 WHAT THE TENANT MUST DO

The **tenant** or the **tenant's agent** must:

- (a) **Hold Licence:** be the holder of a **licence**; and
- (b) **Comply with Law:** strictly comply, and ensure that all of the **tenant's agents** strictly comply, with the **Liquor Act** and the requirements of the **competent authority** responsible for the **Liquor Act**; and
- (c) **Lodge renewals:** do all reasonable things necessary to keep the **licence** current including renewing the **licence** on time; and
- (d) **Transfer Licence on expiration:** at least 28 days prior to the **end of this lease**, immediately execute and give to the **landlord** a notice of transfer of the **licence** acceptable in the **State** and do all things necessary to enable the **landlord** or any person nominated by the **landlord** to obtain a transfer of the **licence**; and
- (e) **Tender Licence:** at the **end of this lease**, immediately hand over the **licence** to the **landlord** or the **landlord's** nominee; and
- (f) **Notices to Landlord:** forward a copy of all information supplied by the **tenant** under the **Liquor Act** to the **landlord**.

13.2 WHAT THE TENANT MUST NOT DO

The **tenant** and the **tenant's agents** must not:

- (a) **Allow Licence to be Prejudiced:** do anything where the **licence** is or is liable to be cancelled, surrendered or forfeited; and
- (b) **Restriction on transfer:** without prior consent of the **landlord**, transfer the **licence** to any other person. If the **landlord** will consent to an assignment of this **lease** subject to the **competent authority** approving the transfer of the **licence** to the assignee then the **landlord** is taken to have consented to the transfer of the **licence**; and
- (c) **No deduction:** recover from the **landlord** by way of deduction from the **rent** or otherwise any part of the **licence** fees paid by the **tenant** for the **licence**.

13.3 INSPECTION BY LANDLORD

The **landlord** may inspect and take copies of any information provided by the **tenant** to a **competent authority** under the **Liquor Act**. The production of this **lease** is sufficient authority to the **competent authority** to permit the **landlord** to make an inspection.



14. DAMAGE DESTRUCTION OR RESUMPTION

14.1 OBLIGATION OF LANDLORD

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

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

14.2 NO OBLIGATION TO REINSTATE

This clause does not oblige the **landlord** to reinstate or repair the **Licensed Restaurant and Mews**.

14.3 ABATEMENT OF RENT

If the **Licensed Restaurant and Mews** is destroyed or damaged (whether or not including the obstruction of the normal means of access to the **Licensed Restaurant and Mews**):

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

14.4 NOT TO PREJUDICE

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

- (a) the damage is caused by, contributed to by or arises from, an act or omission of the **tenant** or the **tenant's agents**; or



- (b) a policy of insurance in connection with the **Licensed Restaurant and Mews** is cancelled or made void because of some act or omission of the **tenant** or of the **tenant's agents**; or
- (c) the **tenant** has failed to take out and/or maintain loss of income insurance required under clause 8 or the **tenant** is entitled to make a valid claim under that loss of income policy;

14.5 RESUMPTION

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

15. POWER OF ATTORNEY

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

16. NOTICES

16.1 VALIDITY

To be valid and effective a notice or document must be



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

16.2 WHEN RECEIVED

A notice or document is taken to be received:

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

17. GUARANTEE AND INDEMNITY

17.1 GUARANTEE

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

17.2 INDEMNITY

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

17.3 LIABILITY OF GUARANTOR

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



- (a) re-entry to the **Licensed Restaurant and Mews** by the **landlord**; or
- (b) default by the **tenant**; or
- (c) termination of this **lease**; or
- (d) allowing any concession to the **tenant** or to any other person; or
- (e) the death, mental incapacity, bankruptcy, assignment for the benefit of creditors, arrangement with creditors, winding-up, reconstruction, official management, receivership, liquidation, striking off or other demise of the **tenant** or of any **guarantor**; or
- (f) the **landlord** failing or neglecting to exercise or waiving or deferring any or all of its rights or remedies under this **lease**; or
- (g) any lack of capacity or power by the **tenant** to enter into this **lease** or by the **guarantor** to enter into this guarantee; or
- (h) any act or omission on the part of the **landlord** contrary to the interests of the **guarantor**; or
- (i) the obtaining of any judgment against the **tenant** or the **guarantor**; or
- (j) any actual or alleged set-off, defence, counterclaim or other deductions on the part of the **tenant** or the **guarantor**; or
- (k) any variation of the terms of this **lease**; or
- (l) any other event, act, omission, mistake, laches or default of the **landlord** whereby the **guarantor's** liability to the **landlord** would, but for this provision, have been affected or discharged.

17.4 MORE THAN 1 GUARANTOR

If there is more than one **guarantor**:

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

17.5 ASSIGNMENT

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



17.6 PRINCIPAL OBLIGATIONS

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

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

17.7 PROOF

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

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

17.8 WARRANTY BY GUARANTOR

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

18. NOTICES

18.1 TENANT'S DECLARATIONS

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

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

18.2 LIABILITY OF THE TENANT

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

18.3 OBLIGATIONS OF THE TENANT

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



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

19. DISPUTE RESOLUTION

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

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

The **landlord** and the **tenant** must share the costs of the expert equally.

20. GOODS AND SERVICES TAX

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

21. SECURITY DEPOSIT

- 21.1 The **tenant** shall pay the **security deposit** to the **landlord** on or prior to the **commencement date** as security for the performance by the **tenant** of its obligations in this



lease.

- 21.2 The **security deposit** must be held by the **landlord** on behalf of the **tenant** in an interest bearing bank account.
- 21.3 The **landlord** must account to the **tenant** for interest accrued on the **security deposit** but the **landlord** shall be entitled to keep the interest and deal with it as money paid by the **tenant** to the Landlord to form part of the **security deposit**
- 21.4 In the event that the **rent** is increased at any time, the **landlord** may require the **tenant** to increase the **security deposit** by one twelfth of the increase and to pay the additional **security deposit** at the same time as the first monthly payment of additional **rent** is due.
- 21.5 The **landlord** may draw on the **security deposit** by withdrawing an amount from the bank account that is sufficient to enable the **landlord** to apply the amount towards remedying any breach of any condition of the **lease** by the **tenant** at any time after any breach occurs.
- 21.6 If the **landlord** has withdrawn all or any part of the **security deposit** and applied it in the manner specified in clause 20.5 then the **tenant** shall pay to the **landlord** upon demand an amount required to replenish the **security deposit** back to its balance immediately prior to the withdrawal taking place.
- 21.7 The **landlord** is not entitled unreasonably to refuse to accept a guarantee from an ADI (within the meaning of the Banking Act 1959 of the Commonwealth) in satisfaction of any requirement to provide security in the form of a deposit, bond or third party guarantee for the performance of the **tenant's** obligations under the **lease**.

22. REMOVAL OF TREES

If at any time during the term of this lease or any renewal the landlord (acting reasonably) forms the opinion that any tree or trees on the property are likely to cause structural damage to any of the improvements on the property then the landlord may, without having any obligation to do so, remove any such tree and the tenant may not raise any objection to the removal of any such tree.

23. MORTGAGE OF LEASE

The landlord shall not be obliged to consent to the tenant granting a mortgage of this lease, and the landlord may withhold its consent at its absolute discretion. If the tenant requires the landlord to consent to the tenant granting a mortgage of this lease in favour of any person or corporation, the tenant hereby agrees and acknowledges that the following provisions shall apply:-

23.1 CONSENT

The landlord may withhold its consent to the leasehold mortgage at its absolute discretion.



23.2 LANDLORDS COSTS

The tenant must pay the landlords costs immediately upon demand in respect of:-

- (a) consideration of the leasehold mortgage;
- (b) consent to the leasehold mortgage;
- (c) refusal of leasehold mortgage;
- (d) any matter, action or notice required by the terms of the leasehold mortgage if consented to by the landlord;
- (e) the landlord may withhold any consents or actions until payment has been made by the tenant.

23.3 TENANTS OBLIGATIONS

If the landlord is required to take any action under the leasehold mortgage and requires the tenant to facilitate, assist or take any action, then the tenant shall do so expeditiously.

23.4 BREACH OF THIS CLAUSE

Any breach of this clause shall be deemed to be a breach of an essential term of the lease.

24 OPTION TO PURCHASE CHATTELS

Notwithstanding any other provision of this lease, the landlord may at its option purchase at the expiration or sooner determination of the term hereof such plant, equipment, machinery, fixtures, fittings, chattels and effects (hereinafter called "the tenants equipment") on the demised premises used in connection with the licensed restaurant and mews business conducted by the tenant. The purchase price will be that price agreed upon by the landlord and the tenant and in the absence of agreement the price will be determined by a Valuer appointed by the President for the time being of the Australian Property Institute - Victorian Division upon the reference of either party. The valuation shall be carried out and concluded prior to the expiry of the term or, in the case of an earlier determination, as soon as practicable after that determination. The price shall be the value of the tenants equipment at an in situ valuation based upon replacement cost less fair, wear and tear and shall be paid by the landlord to the tenant within three (3) business days of the price being determined. Property in the tenants equipment shall only pass to the landlord upon payment by the landlord of the price in full.



DATED the _____ day of _____, 2008.

IN WITNESS whereof the parties hereto have executed these presents the day, month and year hereinbefore written.

EXECUTED by PERENNIS PTY LTD (ACN. 099 380 604) pursuant to Section 127(1) of the Corporations Act (Cwth) 2001 in the presence of:

Sole Director and company Secretary:
Name: Anthony Alan Johnson
Usual address: The Pegasus Centre
Unit 9, 42-46 Bundall Road
BUNDALL QLD 4217

EXECUTED by SHOKUDO PTY LTD (ACN 134 080 158) pursuant to Section 127(1) of the Corporations Act (Cwth) 2001 in the presence of:

Director:
Name: Michael Paul Ryan
Usual address: 86 Ford Street, Beechworth, Victoria, 3747

Director/Secretary:
Name: Jeanette Katherine Henderson
Usual address: 86 Ford Street, Beechworth, Victoria, 3747

SIGNED SEALED AND DELIVERED)
by the said MICHAEL PAUL RYAN as)
Guarantor in the presence of:)

Witness:

SIGNED SEALED AND DELIVERED)
by the said JEANETTE KATHERINE)
HENDERSON as Guarantor in the)
presence of:)

Witness:

