

The Provenance

An Outstanding Heritage Investment in the Heart of Beechworth



1.1 Summary

- Forthcoming Auction or For Sale Now
- Originally built as a bank
- Brilliant restoration retaining many original features
- Fully licensed restaurant on premises securely leased to award winning chef
- Current rental \$86,105 per annum plus GST
- 4 x luxurious Bed & Breakfast suites located in converted stables at rear
- Land size 1,012 square metres approx
- Zoned – Business 1



1.2 Introduction

It is with great pleasure that we offer this outstanding Blue Chip freehold property in the heart of Beechworth, securely leased to one of the country's finest chefs Michael Ryan, from the award winning *2 Chefs Hat* Range Restaurant.

Originally built as a bank, it retains most of its original features which have been lovingly restored and has all original bank vaults still in place.

The premises consists of a fully licensed restaurant The Provenance, four separate B&B units, as well as a lavish Manager's residence.

1.3 About the Tenant

Michael Ryan and his partner Jeanette Henderson are locals from the area.

Michael Ryan formerly from the well acclaimed and awarded *2 Chefs Hat Range Restaurant* in Myrtleford, has moved to The Bank Beechworth to expand his highly successful restaurant business and is now able to offer clients AAA guest accommodation.

Michael and his partner Jeanette (an experienced winemaker) have re-branded their business Provenance Restaurant & Luxury Suites.

Having worked overseas in exotic places like Harare in Zimbabwe, he decided to settle in North East Victoria, where he worked in the Milawa Factory Bakery Restaurant and then on to Wardens, another magnificent *1 Chefs Hat* restaurant in the strip where his food received 18/20 from Stephen Downes in *The Herald Sun*. From there, Michael and Jeanette opened Range in Myrtleford in 2005, as well as the Japanese inspired Tsubo Bar & Restaurant in Dinner Plain Hotham.

<http://www.theprovenance.com.au/>





1.4 About Beechworth

Beechworth is one of Victoria's best presented and notable gold rush towns with an eclectic array of galleries, fine dining restaurants and eateries including the famous Beechworth Bakery, and has over 30 of its buildings on the National Trust register.

It also has a number of the best small family vineyards producing some of the finest wines – including The Castagna Vineyard wines.

The historic town of Beechworth is respectfully known as the 'Elegant Dame' within our family of towns. With all the sensibilities of a grand 19th century town you'll be reminded of a Jane Austen novel, as you look down from the foothills of the Australian Alps onto the wide, tree-lined streets, with their deep granite gutters and shady, century-old verandahs.





Contact:

For more detail about The Provenance and your opportunity to buy this outstanding Heritage building in the heart of Beechworth with such a strong tenant contact;

Colliers International Ballarat

618 Strut Street Ballarat Victoria 3350

Andrew Lewis 0418 508 908 andrew.lewis@colliers.com

David Wright 0418 518 353 david.wright@colliers.com



Our Knowledge is your Property

LEASE

PERENNIS PTY LTD (ACN 099 380 604)
(Landlord)

SHOKUDO PTY LTD (ACN 134 080 158)
(Tenant)

The Bank Beechworth
86 Ford Street, Beechworth, Victoria, 3747
(Premises)



TABLE OF CONTENTS

| | | |
|-----------|---|-----------|
| 1. | UNDERSTANDING THIS LEASE | 5 |
| 1.1 | THE MEANING OF CERTAIN WORDS | 5 |
| 1.2 | MORE THAN ONE TENANT | 10 |
| 1.3 | GENERAL | 10 |
| 1.4 | OTHER REFERENCES | 11 |
| 2. | GRANT OF TERM | 13 |
| 2.1 | GRANT | 13 |
| 2.2 | INITIAL TERM | 13 |
| 2.3 | GRANT OF OPTION | 13 |
| 2.4 | TERMS OF THE FURTHER LEASE | 13 |
| 2.5 | HOLDING OVER | 14 |
| 3. | RENT | 14 |
| 3.1 | RENT | 14 |
| 3.2 | RENT REVIEW | 14 |
| 4. | OTHER COSTS | 15 |
| 4.1 | OUTGOINGS | 15 |
| 4.2 | SERVICE COSTS | 16 |
| 4.3 | LEGAL COSTS | 16 |
| 4.4 | INTEREST ON LATE PAYMENTS | 17 |
| 4.5 | TENDER AFTER DETERMINATION | 17 |
| 5. | ASSIGNMENT AND OTHER PROHIBITED DEALINGS | 17 |
| 5.1 | PROHIBITED DEALINGS | 17 |
| 5.2 | CONSENT TO ASSIGNMENT | 17 |
| 5.3 | CONSENT TO ANYTHING OTHER THAN ASSIGNMENT | 17 |
| 5.4 | CHANGE IN CONTROL OF TENANT | 17 |
| 5.5 | Guarantees on Assignment or Change in Control of Tenant | 19 |
| 5.6 | TENANT'S OPTION | 19 |
| 5.7 | ASSIGNMENT BY LANDLORD | 19 |
| 6. | USE OF THE LICENSED RESTAURANT AND MEWS | 20 |
| 6.1 | WHAT THE TENANT MUST DO | 20 |
| 6.2 | WHAT THE TENANT MUST NOT DO | 23 |
| 7. | MAINTENANCE REPAIR AND ALTERATIONS | 24 |
| 7.1 | WHAT THE TENANT IS RESPONSIBLE FOR | 24 |
| 7.2 | IF THE AAA RATING CEASES | 25 |
| 7.3 | WHAT THE TENANT IS NOT RESPONSIBLE FOR | 25 |
| 7.4 | WHAT THE LANDLORD IS RESPONSIBLE FOR | 25 |
| 7.5 | NOTICE OF DAMAGE | 26 |
| 7.6 | TENANT'S ALTERATIONS | 26 |
| 7.7 | STRUCTURAL MAINTENANCE AND REPAIR | 27 |
| 8. | INSURANCES | 27 |
| 8.1 | MAINTAIN INSURANCES | 27 |
| 8.2 | REQUIREMENTS FOR INSURANCES | 27 |
| 8.3 | TENANT NOT TO PREJUDICE | 28 |
| 8.4 | PROCEEDS OF INSURANCE | 28 |
| 8.5 | RISK | 28 |
| 8.6 | INDEMNITY | 28 |
| 8.7 | LANDLORD NOT LIABLE | 28 |



| | | |
|------------|---|-----------|
| 8.8 | CONTINUING OBLIGATION | 29 |
| 9. | LANDLORD'S OBLIGATIONS | 29 |
| 9.1 | QUIET ENJOYMENT | 29 |
| 9.2 | LANDLORD TO PURCHASE TENANT'S PROPERTY | 29 |
| 9.3 | MORTGAGEE CONSENT | 30 |
| 10. | LANDLORD'S RIGHTS | 31 |
| 10.1 | ENTRY BY LANDLORD | 31 |
| 10.2 | NOTICE AND DISTURBANCE | 31 |
| 10.3 | ANTECEDENT BREACHES | 31 |
| 10.4 | ENTRY BY LANDLORD ON ABANDONMENT | 31 |
| 11. | DEFAULT | 32 |
| 11.1 | ESSENTIAL TERMS | 32 |
| 11.2 | DEFAULT | 32 |
| 11.3 | LANDLORD'S RIGHT TO TERMINATE | 33 |
| 11.4 | INDEMNITY FOR TERMINATION | 33 |
| 11.5 | WHAT HAPPENS TO THE TENANT'S PROPERTY? | 34 |
| 12. | END OF THE LEASE | 35 |
| 12.1 | TENANT'S OBLIGATIONS | 35 |
| 12.2 | THE TENANT'S PROPERTY | 35 |
| 12.4 | RISK IN TENANT'S PROPERTY | 35 |
| 13. | LIQUOR LICENCE | 36 |
| 13.1 | WHAT THE TENANT MUST DO | 36 |
| 13.2 | WHAT THE TENANT MUST NOT DO | 36 |
| 13.3 | INSPECTION BY LANDLORD | 36 |
| 14. | DAMAGE DESTRUCTION OR RESUMPTION | 37 |
| 14.1 | OBLIGATION OF LANDLORD | 37 |
| 14.2 | NO OBLIGATION TO REINSTATE | 37 |
| 14.3 | ABATEMENT OF RENT | 37 |
| 14.4 | NOT TO PREJUDICE | 37 |
| 14.5 | RESUMPTION | 38 |
| 15. | POWER OF ATTORNEY | 38 |
| 16. | NOTICES | 38 |
| 16.1 | VALIDITY | 38 |
| 16.2 | WHEN RECEIVED | 39 |
| 17. | GUARANTEE AND INDEMNITY | 39 |
| 17.1 | GUARANTEE | 39 |
| 17.2 | INDEMNITY | 39 |
| 17.3 | LIABILITY OF GUARANTOR | 39 |
| 17.4 | MORE THAN 1 GUARANTOR | 40 |
| 17.5 | ASSIGNMENT | 40 |
| 17.6 | PRINCIPAL OBLIGATIONS | 41 |
| 17.7 | PROOF | 41 |
| 17.8 | WARRANTY BY GUARANTOR | 41 |
| 18. | NOTICES | 41 |
| 18.1 | TENANT'S DECLARATIONS | 41 |
| 18.2 | LIABILITY OF THE TENANT | 41 |
| 18.3 | OBLIGATIONS OF THE TENANT | 41 |
| 19. | DISPUTE RESOLUTION | 42 |
| 20. | GOODS AND SERVICES TAX | 42 |
| 21. | SECURITY DEPOSIT | 42 |
| 22. | REMOVAL OF TREES | 43 |



| | | |
|------------|--|-----------|
| 23. | MORTGAGE OF LEASE | 43 |
| | 23.1 CONSENT | 43 |
| | 23.2 LANDLORDS COSTS | 44 |
| | 23.3 TENANTS OBLIGATION | 44 |
| | 23.4 BREACH OF THIS CLAUSE | 44 |
| 24. | OPTION TO PURCHASE CHATELS..... | 44 |



PARTICULARS

| | | |
|---------|------------------------------|---|
| Item 1 | Landlord | PERENNIS PTY LTD (ACN 099 380 604) |
| Item 2 | Landlord's Address | "The Pegasus Centre", Unit 9, 42-46 Bundall Road, Bundall, Queensland, 4217 as Trustee for the Pol Property Trust |
| Item 3 | Tenant | SHOKUDO PTY LTD (ACN 134 080 158) |
| Item 4 | Tenant's Address | 86 Ford Street, Beechworth, Victoria, 3747 |
| Item 5 | Name and Address of Premises | The Bank Beechworth, 86 Ford Street, Beechworth, Victoria, 3747 |
| Item 6 | Phone Number of Premises | 03 5728 1786 |
| Item 7 | Details of land | Certificate of Title Volume 9927 Folio 728 |
| Item 8 | Term | Five (5) years commencing December 2008 |
| Item 9 | Rent | Eighty-five thousand dollars (\$85,000.00) per annum (plus GST) |
| Item 10 | Rent Review Date | Annually upon each anniversary of the commencement date |
| Item 11 | Manner of Rent Review | As described in clause 3.2(a) hereof |
| Item 12 | Permitted Use | Licensed Restaurant and Mews |
| Item 13 | Guarantor | Michael Paul Ryan and Jeanette Katherine Henderson both of 86 Ford Street, Beechworth, Victoria, 3747 |
| Item 14 | Length of Option Period | Five (5) years |
| Item 15 | Further option periods | Two (2) further terms each of five (5) years |
| Item 16 | Public Risk | Ten Million Dollars (\$10,000,000.00) |
| Item 17 | Security deposit | SEVEN THOUSAND AND EIGHTY-THREE DOLLARS AND THIRTY-THREE CENTS (\$7,083.33) |
| Item 18 | AAA Rating | To be determined as a result of the first rating assessment but, not less than 4 1/2 stars |



1. UNDERSTANDING THIS LEASE

1.1 THE MEANING OF CERTAIN WORDS

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

- AAA:** the motoring club, association or body in the State in which the **Licensed Restaurant and Mews** is located which is affiliated with the Automobile Association of Australia and includes its successors.
- AAA Rating:** the star rating set out in the **particulars** that the **Licensed Restaurant and Mews** must obtain from **AAA**;
- AAA Report:** the hotel, Licensed Restaurant and Mews classification assessment for the **Licensed Restaurant and Mews** prepared by the **AAA** under the National Accommodation Classification Scheme.
- air-conditioning equipment:** the ducted heating and cooling system (if any), consisting of the heating/cooling plant, duct work, vents and thermostat for that system located in the **Licensed Restaurant and Mews** restaurant, conference centre (if any) and reception area but not including any individual heating and/or cooling units that service each accommodation unit in the **Licensed Restaurant and Mews**.
- building:** all structures and improvements that already exist or are erected on or within the **land** during this **lease**. This includes the **landlord's property** and any modifications, extensions or alterations of the **building** or the **landlord's property** and any in ground swimming pool.
- business name:** the business or trade name of the **Licensed Restaurant and Mews** and any business or trade name registered or used by the **tenant** in connection with the **Licensed Restaurant and Mews**.
- commencement date:** the **commencement date** set out as such in the **particulars**.
- competent authority:** any Court, state, federal or local government authority, instrumentality or body, or any other person having jurisdiction over the **Licensed Restaurant and Mews**, the **landlord's property**, or the **tenant's property**, whether in the **State** for Federally or both.
- CPI:** the Consumer Price Index (all Groups) for the capital city of the State in which the **Licensed Restaurant and Mews** is located as published by the Australian Bureau of Statistics.
- If the **CPI** no longer exists or is changed so that it does not (in the **landlord's** reasonable opinion) reflect the changes which have occurred in the cost of living for that capital city during any year, then **CPI** means that index



determined by the Australian Bureau of Statistics as the index that best replaces the **CPI**.

- CPI review dates:** those dates specified or described as such in the **particulars**.
- end of the lease:** the **expiry date** or any earlier date on which the **lease** is terminated other than as a result of the **landlord** exercising its right to re enter and terminate the lease prior to its expiration.
- expiry date:** the **expiry date** set out as such in the **particulars**.
- further option periods:** the option periods referred to as such in the **particulars**.
- dispose:** to assign, transfer, sub-let, demise, part with, declare a trust, assign for the benefit of creditors, mortgage or charge, share the possession of, or grant any license affecting, or otherwise dealing with, or the disposing of any estate or interest in the **Licensed Restaurant and Mews** or the rights and powers under this **lease** or of any estate or interest in the **tenant's business** and **disposal** has a like meaning.
- insolvency event:** includes:-
- (i) a winding up order is made; or
 - (ii) a liquidator or provisional liquidator is appointed; or
 - (iii) a meeting is convened or resolution passed to appoint an official manager in respect of a corporation; or
 - (iv) a corporation enters into, or resolves to enter into, a scheme of arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them; or
 - (v) a corporation resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, or is otherwise wound up or dissolved; or
 - (vi) a corporation is or states that it is unable to pay its debts when they fall due; or
 - (vii) a corporation takes any steps to obtain protection or is granted protection from its creditors, under any applicable legislation; or
 - (viii) a person becomes an insolvent under administration as defined in section 9 of the Corporations Law or action is taken which could result in that event; or



| | |
|--------------------------------------|--|
| | (ix) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction. |
| land: | the property described as such in the particulars. |
| landlord: | the party described as such in the particulars and that party's successors in title and assigns including any assignee pursuant to a change in trustee of the trust . |
| landlord's agents: | employees, agents, contractors, consultants, customers, workmen, invitees, clients, and visitors (whether with or without invitation) or any other person who may claim through or under the landlord . |
| landlord's property: | <p>all the items of equipment installed within the Licensed Restaurant and Mews by the landlord or any previous proprietor that are not purchased by the tenant through which the services are provided.</p> <p><i>This clause includes the following types of items (this is not an exhaustive list):</i></p> <p><i>Plumbing;</i> <i>all paving and sealed driveway and parking areas;</i> <i>drainage and conduits;</i> <i>gas and electrical fittings and wiring;</i></p> <p>together with any built in shelving and/or cupboards.</p> |
| lease: | includes these conditions, the statutory form, the particulars , all plans and annexures. If the Licensed Restaurant and Mews is in the State of Victoria then it is not intended that the lease will be registered under the Transfer of Land Act 1958 and a reference to this lease includes a reference to a lease at law or an equitable lease. |
| liquor licence: | the liquor licence (if any) attaching to the Licensed Restaurant and Mews , issued under the Liquor Act. |
| Liquor Act: | the legislation for the State in which the Licensed Restaurant and Mews is located which regulates the sale and distribution of liquor. |
| market review dates: | each date or dates referred to as such in the particulars |
| Licensed Restaurant and Mews: | the premises described in the particulars including the land and the building . |
| option period: | means the option period that applies to this term as set out in the particulars . |



outgoings: the costs incurred by the **landlord** in respect of the **landlord's** ownership and supply of the **Licensed Restaurant and Mews**, including:

- (i) rates, taxes, charges and other levies payable to a **competent authority** for the **Licensed Restaurant and Mews** (save and except for land tax); and
- (ii) insurance premiums and other charges in connection with insurance covering damage or destruction of the **building** and the **landlord's** own public risk insurance against insurable risks which the **landlord** considers must be covered in relation to the **Licensed Restaurant and Mews** and for persons in the **Licensed Restaurant and Mews** for any reason;
- (iii) any costs incurred by the **landlord** in maintaining and/or repairing the **landlord's property** unless such costs are the **landlord's** responsibility pursuant to this Lease or the relevant legislation.

provided that the **landlord** is not prohibited by the law of the **State** from requiring the **tenant** to pay the particular **outgoing**;

particulars: the particulars to this lease.

rent: the yearly rent specified as such in the **particulars** as varied by the terms of this **lease**.

review date: means a CPI review date or a market review date.

security deposit: the initial sum referred to in the **particulars** as adjusted in accordance with this **lease**

services: any one or more of the following services running through or servicing the **Licensed Restaurant and Mews**

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

power;

water;

gas;

sewerage;

drainage;

*the **air conditioning equipment**;*

in built fire sprinkler and fire protection systems;

alarm systems;

automatic opening and closing door systems;

lifts and elevators;

telecommunications;

piped music; and

public address system.

In ground garden and lawn sprinkler system(s)



| | |
|---------------------------|--|
| State | the relevant state in Australia in which the Licensed Restaurant and Mews is situated. |
| statutory form | if the State requires registration of this lease , the form attached to this lease used for the purposes of registration. |
| tenant | that party described as such in the particulars , its successors an permitted assigns and, where it can be applied, the tenant's agents |
| tenant's agents: | employees, agents, contractors, consultants, customers, workmen, invitees, clients, visitors (whether with or without invitation), subtenants and licensees or any other person who may claim through or under the tenant . |
| tenant's business: | the Licensed Restaurant and Mews business and any other business conducted by the tenant in the Licensed Restaurant and Mews including, but not limited to, any licensed restaurant or entertainment facility or any conference, tourist or hospitality related facility. |
| tenant's property: | <p>all property, plant and equipment, fixtures and fittings owned and used by the tenant in the operation of the tenant's business or otherwise brought to the Licensed Restaurant and Mews or installed by the tenant at the Licensed Restaurant and Mews including the list of plant, equipment etc described in the attached list of equipment, but it does not include the landlord's property</p> <p><i>This clause includes the following types of items (this is not an exhaustive list):</i></p> <ul style="list-style-type: none"> <i>movable furniture;</i> <i>office equipment;</i> <i>individual air conditioning units (NOT the air conditioning equipment);</i> <i>carpets or loose floor coverings;</i> <i>curtains and blinds;</i> <i>telephone handsets and system;</i> <i>hot water units;</i> <i>swimming pool equipment;</i> <i>light fittings (excluding the light sockets); and</i> <i>all other property in, or fixed to the Licensed Restaurant and Mews that is not the landlord's property.</i> |
| term | the period of time this lease will be in operation as described in clause 2.2, subject to the lease being terminated earlier. |
| third party | any person or entity (company or otherwise) other than the tenant or the landlord . |



1.2 MORE THAN ONE TENANT

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

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

1.3 GENERAL

- (a) Governing Law: this **lease** is governed by the law of the **State**.
- (b) Exercise of rights:
 - (i) the **landlord** may exercise a right, power or remedy at its discretion, and separately or together with another right, power or remedy; and
 - (ii) If the **landlord** does not exercise or delays in exercising a right, power or remedy, the **landlord** may still exercise it at a later time; and
 - (iii) the **landlord** is not liable for any loss caused by the exercise, attempted exercise, failure to exercise or delay in exercising a right, power or remedy under this **lease**.
- (c) Waiver and variation: Any provision or right under this **lease** may only be waived or varied in writing signed by the parties to be bound.
- (d) Additional Remedies: The rights, powers and remedies provided in this **lease** are in addition to (not exclusive of) the rights, powers or remedies provided by law.
- (e) Future legislation: Any present or future legislation which varies the obligations of the **tenant** or the **guarantor** under this **lease** so that the **landlord's** rights, power or remedies are adversely affected is excluded to the extent allowed by law.
- (f) Execute documents: The **tenant** and the **guarantor** must, at their expense, if asked, execute and cause their successors to execute any documents and do everything else necessary to bind the **tenant** or the **guarantor** and its successors under this **lease**.
- (g) Exclusion of statutory provisions: if a law of the **State** permits it, the following provisions do not apply in this **lease**:
 - (i) if the **Licensed Restaurant and Mews** is located in New South Wales - sections 84 and 85 of the Conveyancing Act 1919 (NSW) together with all of the words in the first and second columns in part 2 of the fourth schedule to that Act; or

if the **Licensed Restaurant and Mews** is located in Victoria – sub section 144(1) of the Property Law Act 1958.



- (h) **Prior obligations:** The **end of the lease** does not affect the **tenant's** or the **guarantor's** obligations:-
- (i) to make any payment under this **lease**, due before the **end of this lease**; or
 - (ii) to provide information to the **landlord** to enable it to calculate those payments.
- (i) **Severability:** If any part of this **lease** is void, unenforceable or illegal then it may be severed from this **lease**. The remainder of this **lease** has full force and effect.
- (j) **Counterparts:** This **lease** may consist of a number of separate parts. All of the parts together make up one and the same document.
- (k) **Entire agreement:** This **lease** is the entire agreement between the parties.
- (l) **Representations:** The **landlord** and **tenant** both agree that they have not been induced to enter into this **lease** by any representation, verbal or otherwise, made by or on behalf of the other party and which is not set out in this **lease**.
- (m) **Rent and other moneys:** The **tenant** and the **guarantor** must make payments under this **lease** without set-off or counterclaim and free from deduction.
- (n) **May demand difference:** If the **tenant** or the **guarantor** pays an amount and it is found later that the amount payable should have been higher, the **landlord** may demand payment of the difference.
- (o) **Demand not required:** The **landlord** need not make demand for any amount required to be paid by the **tenant** under this **lease** unless expressly stated otherwise.
- (p) **At tenant's cost:** Anything which the **tenant** is required to do under this **lease** must be done at the **tenant's** cost unless expressly stated otherwise.
- (q) **Misuse:** The **tenant** acknowledges that any failure on its part to carry out any of its obligations in this **lease** that deal with maintenance, repair, servicing and/or cleaning amounts to misuse of the item to which the relevant obligation relates to.

OTHER REFERENCES

- (a) A reference to any organisation (Example: the Law Society, Insurance Council of Australia, the Australian Institute of Valuers and Land Economists or any **competent authority**) means the organisation in the **State**.
- If the organisation no longer exists then it will be the organisation that the **landlord** considers has similar powers or functions.
- (b) A reference to any legislation (or any section) includes any amendment, re-enactment or substitution for it and any regulation issued under it.



- (c) A reference to the **landlord's** right of access to the **Licensed Restaurant and Mews** includes all persons authorised by the **landlord**. (This will include agents, professional advisers, contractors, workmen and others.)
- (d) A reference to any whole includes any part.
- (e) A reference to "month" means a calendar month.
- (f) Any obligation by the **tenant** not to do any act or thing includes an obligation not to permit and to prevent such act or thing being done.
- (g) The singular indicates the plural and vice versa.
- (h) Any gender includes the other gender;
- (i) A reference to a person includes an individual and a corporation.
- (j) A reference to any party in this **lease** includes its successors and assigns.
- (k) Every obligation or covenant is a separate and independent covenant.
- (l) The headings and examples in this **lease** are included for convenience only and do not affect the interpretation of this **lease**.
- (m) Anything that is required to be done on a Saturday, Sunday or public holiday in the place where the **Licensed Restaurant and Mews** is situated, may be done on the next business day.
- (o) All obligations under this **lease** must be performed punctually and properly.
- (p) If this **lease** requires the **tenant** to obtain the consent or approval of the **landlord** for any action then the **tenant** must obtain the consent or approval in writing before starting to take the action.
- (q) Unless a clause specifies a different position, If the **landlord** is requested to consent to any thing under this lease then that consent must not be unreasonably withheld but the **tenant** must obtain that consent in writing.
- (r) If the **landlord** has agreed to obtain a person's consent in respect of anything in connection with this **lease** then the **landlord** must do everything reasonably necessary to obtain that consent.

The **tenant** authorises the **landlord** and its solicitors before at or after the Commencement Date to complete any blanks in this Lease with a proper date or to make any formal correction necessary to enable registration of this Lease.



2. GRANT AND TERM

2.1 GRANT

The **landlord** grants a lease of the **Licensed Restaurant and Mews** to the **tenant** in accordance with the provisions of this **lease**.

2.2 INITIAL TERM

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

2.3 GRANT OF OPTION

If the **tenant** gives written notice to the **landlord** not less than 6 months prior to the expiration of this term that it wishes to take a further **lease** of the **Licensed Restaurant and Mews** then the **landlord** will, at the **expiry date**, grant to the **tenant** a further **lease** of the **Licensed Restaurant and Mews** for the **option period** unless

- (i) any **rent** that is due at the time of the notice or at any time thereafter has not been paid by the **tenant** in accordance with the lease even though no notice of the failure to pay has been given by the **landlord**; or
- (ii) (where (i) does not apply), at any time up to the commencement of the renewed term, the **tenant** has been in default on more than two prior occasions for not paying **rent** when the **rent** was due even though no notice of the failure to pay had been given by the **landlord** and even though the **rent** was subsequently paid; or
- (iii) (where (i) or (ii) do not apply) the **tenant** has failed to remedy any other default under the **lease** about which the **landlord** has given the **tenant** written notice; or
- (iv) (where (i) or (ii) or (iii) do not apply) the **tenant** has defaulted under the **lease** more than twice and the **landlord** has given the **tenant** notice of those defaults

2.4 TERMS OF THE FURTHER LEASE

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

- (a) the next of the **further option periods** becomes the **option period**; and
the number of **further option periods** is reduced by 1; and
- (c) the **commencement date** and the **expiry date** will be the commencement date and expiry date of the **option period** that has been exercised; and
- (b) once the last **option period** has been exercised clauses 2.3 and 2.4 are to be deleted from the further lease; and



- (c) the **rent** for first year of each further lease will be determined in accordance with Clause 3.2(b) hereof.

2.5 HOLDING OVER

If the **tenant** remains in occupation of the **Licensed Restaurant and Mews** after the **expiry date** with the written consent of the **landlord** then the occupation:

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

3. RENT

3.1 RENT

- (a) The **tenant** must pay the **rent** to the **landlord**.
- (b) The **rent** must be paid:
 - (i) by equal monthly instalments bi-monthly in advance; and
 - (ii) on the 1st day of each two month period; and
 - (iii) if the **lease** commences on a day other than the 1st of the month then the first payment of **rent** must be apportioned on a daily basis.
- (c) The first instalment of **rent** must be paid on the **commencement date**.

The **tenant** must not make any deduction from the **rent**.
- (e) The **landlord** can require the **tenant** to set up an automatic debit from the **tenant's** bank account into the **landlord's** nominated bank account on a periodic basis to pay the **rent**.

3.2 RENT REVIEW

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

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

Where:

A = the reviewed **rent**; and

B = the **rent** payable immediately before the **review date**; and



2. GRANT AND TERM

2.1 GRANT

The **landlord** grants a lease of the **Licensed Restaurant and Mews** to the **tenant** in accordance with the provisions of this **lease**.

2.2 INITIAL TERM

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

2.3 GRANT OF OPTION

If the **tenant** gives written notice to the **landlord** not less than 6 months prior to the expiration of this term that it wishes to take a further **lease** of the **Licensed Restaurant and Mews** then the **landlord** will, at the **expiry date**, grant to the **tenant** a further **lease** of the **Licensed Restaurant and Mews** for the **option period** unless

- (i) any **rent** that is due at the time of the notice or at any time thereafter has not been paid by the **tenant** in accordance with the lease even though no notice of the failure to pay has been given by the **landlord**; or
- (ii) (where (i) does not apply), at any time up to the commencement of the renewed term, the **tenant** has been in default on more than two prior occasions for not paying **rent** when the **rent** was due even though no notice of the failure to pay had been given by the **landlord** and even though the **rent** was subsequently paid; or
- (iii) (where (i) or (ii) do not apply) the **tenant** has failed to remedy any other default under the **lease** about which the **landlord** has given the **tenant** written notice; or
- (iv) (where (i) or (ii) or (iii) do not apply) the **tenant** has defaulted under the **lease** more than twice and the **landlord** has given the **tenant** notice of those defaults

2.4 TERMS OF THE FURTHER LEASE

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

- (a) the next of the **further option periods** becomes the **option period**; and
the number of **further option periods** is reduced by 1; and
- (c) the **commencement date** and the **expiry date** will be the commencement date and expiry date of the **option period** that has been exercised; and
- (b) once the last **option period** has been exercised clauses 2.3 and 2.4 are to be deleted from the further lease; and



- (c) the **rent** for first year of each further lease will be determined in accordance with Clause 3.2(b) hereof.

2.5 HOLDING OVER

If the **tenant** remains in occupation of the **Licensed Restaurant and Mews** after the **expiry date** with the written consent of the **landlord** then the occupation:

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

3. RENT

3.1 RENT

- (a) The **tenant** must pay the **rent** to the **landlord**.
- (b) The **rent** must be paid:
- (i) by equal monthly instalments bi-monthly in advance; and
(ii) on the 1st day of each two month period; and
(iii) if the **lease** commences on a day other than the 1st of the month then the first payment of **rent** must be apportioned on a daily basis.
- (c) The first instalment of **rent** must be paid on the **commencement date**.
- The **tenant** must not make any deduction from the **rent**.
- (e) The **landlord** can require the **tenant** to set up an automatic debit from the **tenant's** bank account into the **landlord's** nominated bank account on a periodic basis to pay the **rent**.

3.2 RENT REVIEW

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

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

Where:

A = the reviewed **rent**; and

B = the **rent** payable immediately before the **review date**; and



C = the CPI published immediately before the **review date**; and

D = the CPI published immediately before the immediately preceding **review date** (or the **commencement date** if this is the first rent review).

- (b) On each **market review date** the **rent** must be reviewed to a figure which is the annual market **rent**. The annual market **rent** shall be a figure as agreed between the **landlord** and the **tenant**. Should the parties be unable to agree on the **rent** to apply from such **review date** the current market **rent** shall be determined by a valuer agreed upon by the **landlord** and **tenant** or failing agreement chosen in the following manner:
- (i) if the **Licensed Restaurant and Mews** is located in New South Wales then chosen by the President for the time being of the Law Society of New South Wales at the instance of either party; or
 - (ii) if the **Licensed Restaurant and Mews** is located in Victoria then by the Small Business Commissioner under the Retail Leases Act 2003, Victoria.

The current market **rent** shall be determined by the valuer in the following manner:

If the **Licensed Restaurant and Mews** is located in New South Wales then the valuer shall

have regard to:

- A. the provisions of the **lease**
- B. the rent that would reasonably be expected to be paid for the property if it were unoccupied and offered for renting as a going concern for the same or a substantially similar use to which the property may be put under this **lease**; or

If the **Licensed Restaurant and Mews** is located in Victoria then in accordance with section 37 of the Retail Leases Act 2003, Victoria.

Unless contrary to any law in the **State**, the current market **rent** must not be less than the **rent** paid in the immediately preceding lease year. If this clause (e) is contrary to a law in the **State** then this clause (e) does not apply to the **lease**.

4. OTHER COSTS

4.1 OUTGOINGS

The **tenant** must:

- (a) pay the **outgoings** on or before their due date; and



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

4.2 SERVICE COSTS

The **tenant** must pay all costs charged in relation to the **services** provided to the **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**.

