Lease of the Premises at Royal Botanic Gardens Melbourne from which the Observatory Café is currently conducted

Royal Botanic Gardens Board and

[##insert the name of the tenant]

[##insert the name of the first guarantor]

[##insert the name of the second guarantor]
Contents

1. Definitions .............................................................................................................................. 2

2. Grant of Lease and Licences .................................................................................................. 6
   2.1 Lease ................................................................................................................................. 6
   2.2 Permitted Use .................................................................................................................... 6
   2.3 Access to Car Park ............................................................................................................. 6
   2.4 Common Area ................................................................................................................... 6
   2.5 Licence ............................................................................................................................... 7
   2.6 Approval of Governor in Council ....................................................................................... 7

3. Negotiation and disclosure requirements ........................................................................... 7
   3.1 Negotiation for Lease ......................................................................................................... 7
   3.2 Disclosure statement ......................................................................................................... 7

4. Tenant's Fit-out Works ......................................................................................................... 7

5. Duration of the Lease ......................................................................................................... 8
   5.1 Term ................................................................................................................................... 8
   5.2 Option for a Further Term .................................................................................................. 8
   5.3 Execution of new Lease for Further Term ........................................................................ 8
   5.4 Holding Over .................................................................................................................... 8

6. Payment of Rent .................................................................................................................. 9
   6.1 Rent .................................................................................................................................. 9
   6.2 Marketing Contribution ...................................................................................................... 9

7. Market rent review ............................................................................................................... 9
   7.1 Notice by the Board .......................................................................................................... 9
   7.2 Tenant's objection ............................................................................................................. 9
   7.3 Appointing Valuer .......................................................................................................... 9
   7.4 Determination by Valuer .................................................................................................. 10
   7.5 The Board's and Tenant's submissions .......................................................................... 10
   7.6 Written submissions ......................................................................................................... 10
   7.7 Valuer's criteria ............................................................................................................... 10
   7.8 Payment of Rent pending valuation .............................................................................. 11
   7.9 Appointing new Valuer .................................................................................................... 12

8. CPI adjustment of Rent ....................................................................................................... 12
   8.1 Calculation of adjustment ............................................................................................... 12
   8.2 Payment of adjusted Rent .............................................................................................. 12

9. Turnover Rent ..................................................................................................................... 12

10. Outgoings ......................................................................................................................... 13
    10.1 Proportion of Rates and Taxes ......................................................................................... 13
    10.2 Receipt for payment ......................................................................................................... 13
    10.3 Part Year .......................................................................................................................... 13

11. Other expenses .................................................................................................................. 14
    11.1 Services ........................................................................................................................... 14
    11.2 Costs and duty ................................................................................................................. 14

12. GST .................................................................................................................................... 14
    12.1 Definitions ...................................................................................................................... 14
    12.2 GST exclusive ............................................................................................................... 15
12.3 Increase in consideration.............................................................................. 15
12.4 Payment of GST ......................................................................................... 15
12.5 Tax Invoice .................................................................................................. 15
12.6 Reimbursements.......................................................................................... 15
12.7 Adjustment events....................................................................................... 15

13. Bank Guarantee ............................................................................................ 15
13.1 Delivery of Bank Guarantee......................................................................... 15
13.2 The Board's right to call up Bank Guarantee............................................. 16
13.3 Tenant not to injunct .................................................................................. 16
13.4 Tenant to replace Bank Guarantee............................................................. 16
13.5 Return of Bank Guarantee.......................................................................... 16
13.6 Sale of the Premises.................................................................................... 16
13.7 Increased Bank Guarantee.......................................................................... 16

14. Payment requirements .................................................................................. 16
14.1 No deduction or right of set-off .................................................................. 16
14.2 Interest on late payments ........................................................................... 16
14.3 Payment after Termination ........................................................................ 17
14.4 Method of payment .................................................................................... 17

15. Repairs, refurbishment and alterations ....................................................... 17
15.1 Condition report ........................................................................................ 17
15.2 Repairs and Maintenance.......................................................................... 17
15.3 Equipment in Premises ............................................................................ 18
15.4 Alterations to Premises ............................................................................ 18
15.5 Occupational health and safety ................................................................ 18
15.6 Not interfere with services ....................................................................... 19
15.7 Defacing Premises .................................................................................... 19
15.8 Failure to repair and maintain .................................................................. 19

16. Insurance ....................................................................................................... 19
16.1 Public liability and glass insurance ............................................................ 19
16.2 Tenant's Property ...................................................................................... 19
16.3 Condition in policies ............................................................................... 19
16.4 Payment and production of policies .......................................................... 20
16.5 Not invalidate policies ............................................................................ 20
16.6 Requirements by insurer .......................................................................... 20

17. Release, indemnity, compensation and liability ............................................ 20
17.1 Release ....................................................................................................... 20
17.2 Indemnity .................................................................................................. 20
17.3 No compensation ...................................................................................... 20
17.4 No liability ................................................................................................. 20

18. Use of Premises ............................................................................................ 21
18.1 Permitted Use ............................................................................................ 21
18.2 No warranty ............................................................................................... 21
18.3 Illegal purpose ........................................................................................... 21
18.4 Privileged Uses .......................................................................................... 21

19. Operating Hours ........................................................................................... 21

20. Naming Rights ............................................................................................. 22

21. Liquor Licence ............................................................................................... 22
21.1 Transfer ...................................................................................................... 22

22. Other obligations concerning the Premises ................................................ 23
22.1 Policy and Protocol Manual ........................................................................... 23
22.2 KPIs .............................................................................................................. 23
22.3 Revision of the KPIs .................................................................................... 23
22.4 Reporting on KPIs ....................................................................................... 23
22.5 Compliance with laws .................................................................................. 23
22.6 Licences and permits ................................................................................... 24
22.7 Nuisance ....................................................................................................... 24
22.8 Security ......................................................................................................... 24
22.9 Signs ............................................................................................................. 24
22.10 No vending machines ................................................................................ 24
22.11 No auctions ............................................................................................... 24
22.12 No smoking ............................................................................................... 24
22.13 Heavy objects and inflammmable substances ........................................... 24
22.14 Television and radio .................................................................................. 24
22.15 Endanger Premises .................................................................................... 25
22.16 Tenant's employees ................................................................................... 25
22.17 Cleaning ..................................................................................................... 25
22.18 Quarterly Meeting ...................................................................................... 25

23. Tenant's environmental obligations .............................................................. 25
23.1 Comply with Environmental Protection Legislation and Environmental Stewardship Policy ........................................................................................................... 25
23.2 Not permit Contamination .......................................................................... 25
23.3 Notify of and clean up Contamination ....................................................... 25
23.4 Indemnify the Board ................................................................................... 26
23.5 Obtain reports, surveys or audits ............................................................... 26

24. Dealing with interest in the Premises ............................................................. 26
24.1 No parting with possession ......................................................................... 26
24.2 Conditions of assignment ......................................................................... 26
24.3 No assignment if Retail Leases Act to apply ............................................ 27
24.4 Right of first refusal .................................................................................... 27
24.5 Change in shareholding .............................................................................. 27
24.6 Mortgage of Lease ...................................................................................... 27

25. Tenant's obligations at the end of this Lease ................................................ 27
25.1 Tenant's obligations .................................................................................... 27
25.2 Tenant's Property left in Premises ............................................................... 27

26. The Board's rights and obligations ................................................................. 28
26.1 Quiet enjoyment ........................................................................................... 28
26.2 Alterations to the improvements ............................................................... 28
26.3 Dealing with the Land ................................................................................ 28
26.4 Entry by the Board ..................................................................................... 28
26.5 Emergency entry ....................................................................................... 28
26.6 Reletting and sale ...................................................................................... 28
26.7 The Board's consent .................................................................................. 29
26.8 Change in landlord ..................................................................................... 29

27. Termination of Lease .................................................................................... 29
27.1 Re-entry ..................................................................................................... 29
27.2 Damages following determination ........................................................... 29
27.3 Essential terms ........................................................................................... 29
27.4 No deemed termination ............................................................................ 30

28. Relocation ...................................................................................................... 30

29. Demolition .................................................................................................... 31
30. Destruction or damage of Premises ................................................................. 32
    30.1 Reduction in Rent .................................................................................. 32
    30.2 Reinstatement of Premises .................................................................. 32
    30.3 Tenant's right of termination ................................................................ 32
    30.4 Dispute resolution ................................................................................ 32
    30.5 No compensation .................................................................................. 32
31. Redevelopment Works by the Board in the vicinity of the Premises .................. 33
32. Personal Property Securities Act .................................................................... 33
33. Guarantor ....................................................................................................... 35
    33.1 Liability of Guarantor ......................................................................... 35
    33.2 Extension of liability ........................................................................... 35
    33.3 Not enforce claim against Tenant ......................................................... 35
    33.4 Sale of Premises .................................................................................. 35
    33.5 Alternate security ................................................................................ 35
34. General ......................................................................................................... 36
    34.1 Notices ............................................................................................... 36
    34.2 Time of service .................................................................................... 36
    34.3 Entire understanding .......................................................................... 36
    34.4 Waiver ............................................................................................... 36
    34.5 Special Conditions ............................................................................. 36
35. Interpretation ................................................................................................. 37
    35.1 Governing law and jurisdiction ............................................................ 37
    35.2 Persons .............................................................................................. 37
    35.3 Joint and several.................................................................................. 37
    35.4 Legislation .......................................................................................... 37
    35.5 Clauses and headings ......................................................................... 37
    35.6 Severance ........................................................................................... 37
    35.7 Number and gender ............................................................................ 37
    35.8 No relationship ................................................................................... 37
    35.9 Exclusion of statutory provisions ......................................................... 38

Schedule 1 ........................................................................................................ 40
Schedule 2 ........................................................................................................ 42
Schedule 3 ........................................................................................................ 43
Annexure 1 ....................................................................................................... 46
Annexure 2 ....................................................................................................... 47
Annexure 3 ....................................................................................................... 48
Annexure 4 ....................................................................................................... 49
Dated / / 

Parties

This lease is dated the day of 2014 between:

<table>
<thead>
<tr>
<th>Name</th>
<th>Royal Botanic Gardens Board</th>
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<tbody>
<tr>
<td>Address</td>
<td>Birdwood Avenue, Melbourne</td>
</tr>
<tr>
<td>Facsimile</td>
<td>##</td>
</tr>
<tr>
<td>Email</td>
<td>##</td>
</tr>
<tr>
<td>Contact</td>
<td>##</td>
</tr>
<tr>
<td>Short name</td>
<td>Board</td>
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<th>Name</th>
<th>Tenant</th>
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<tr>
<th>Name</th>
<th>Guarantor</th>
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<th>Name</th>
<th>Guarantor</th>
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Background

A. The Board is a body corporate established under the Act and has power to enter into contracts and grant leases in respect of the Premises.

B. The Tenant is the successful tenderer in a tender issued by the Board for the conduct of a café at the Premises.

C. The Board has agreed to lease the Premises to the Tenant on the terms contained in this Lease.

D. The Guarantors have agreed to guarantee the obligations of the Tenant under this Lease.

E. The Lease is subject to approval of the Governor in Council pursuant to section 24(2)(a) of the Act.

F. The Licences granted by clause 2.5 are subject to approval of the Governor in Council pursuant to section 24(2)(b) of the Act.

1. Definitions

In this Lease unless expressed or implied to the contrary:


Bank Guarantee means an unconditional undertaking issued by an authorised deposit taking institution under the Banking Act 1959 (Cth) to pay on demand the amount specified in Item 15.

Board means the Royal Botanic Gardens Board and includes the Board's successors and assigns and where it is consistent with the context includes the Board's employees and agents.

Board's Fixtures means all fittings, fixtures, and chattels contained in the Premises at the Commencement Date or installed by the Board during the Term, including without limitation the Kiosk and storage area.

Car Park means the area marked as such on the Plan.

Carparking Spaces means the carparking spaces allocated to the Tenant by the Board as specified in Item 14 as varied pursuant to clause 2.3.3.

Commencement Date means, subject to clause 2.6, the date specified in Item 6.

Common Area means the area delineated as such on the Plan.

Conditions Precedent Date means the date described in Item 18.

Contamination includes any solid, liquid, gas, radiation or substance which causes or may cause damage or harm to any flora in the Royal Botanic Gardens or which makes or may make the condition of the Premises or groundwater beneath or part of the surrounding environment or any part of the Royal Botanic Gardens:

(a) unsafe, unfit or harmful for habitation by persons or animals; or
(b) unfit for any use permitted under any applicable planning scheme as amended from time to time,

or which is defined as such in any Environmental Protection Legislation.

CPI means the Consumer Price Index - All Groups Melbourne or if this index is not available or is discontinued or suspended, such other index that represents the rise in the cost of living in Melbourne, as the Board reasonably determines.

CPI Adjustment Date means the date(s) (if any) described in Item 13.

Current CPI means the CPI number for the quarter ending immediately prior to the CPI Adjustment Date.

Environmental Protection Legislation means any statute, regulation, code, proclamation, ministerial directive, ordinance, by law, planning policy or subordinate legislation, past, present or future, relating to pollutants and contaminants, use of land, human health and safety or protection of the environment including flora.

Environmental Stewardship Policy means the written policy of the Board dealing with environmental matters.

Essential Safety Measure has the meaning given to that term in the Building Regulations.

Expiry Date means the last day of the Term being the date specified in Item 7.

Front Licenced Area means the area delineated as such on the Plan.

Further Term means the further term(s) specified in Item 9.

Gross Revenue means all revenues, receipts and income of any kind received or entitled to be received by the Tenant, from or in connection with business carried on at or from the Premises and the Licenced Areas, including, without limitation, revenue from catering outside the Premises where food or beverage have been prepared or stored on the Premises but does not include matters which, if the Retail Leases Act applies, are not permitted to be included in Turnover as defined in that Act.

Guarantor means the person or persons specified in Item 3 and if more than one person is specified means those persons jointly and severally.

Hazardous Materials includes all hazardous substances and any pollutant or contaminant defined as such in (or for the purposes of) any Environmental Protection Legislation.

Insolvency Event means:

(a) in the case of a natural person, if that person:
   (i) becomes bankrupt;
   (ii) assigns the person’s estate; or
   (iii) enters into a deed of arrangement or composition for the benefit of creditors.

(b) in the case of a corporation, if that corporation:
   (i) goes into liquidation (including provisional liquidation) other than a voluntary liquidation for the purposes of reconstruction or reorganisation;
(ii) is wound up or dissolved or has an application made for its winding up or dissolution;

(iii) enters into a scheme or arrangement with or makes an assignment for the benefit of its creditors or any class or classes of them;

(iv) is placed under official management;

(v) has an agent in possession or a receiver and/or manager or an administrator appointed to the whole or any substantial part of its assets;

(vi) has an inspector or investigator appointed under the Corporations Act 2001 (Cth); or

(vii) has an administrator appointed under the Corporations Act 2001 (Cth).

**Item** means an item in the Lease Particulars in Schedule 1.

**KPIs** means the Key Performance Indicators listed in Schedule 3.

**Land** means the land specified in Item 4.

**Lease** means this lease and includes all annexures and schedules.

**Lettable Area(s)** means the lettable area of the Premises or the Land, as applicable, as determined by a surveyor engaged by the Board.

**Licensed Areas** means the Front Licensed Area and the Rear Licensed Area

**Market Rent Review Dates** means the date(s) (if any) specified in Item 12.

**Marketing Contribution** means the amount specified in or calculated pursuant to Item 17 and which may be increased by the Board at the commencement of the Further Term in accordance with movements in CPI since the Commencement Date, and which enables the Tenant to be included in the Board’s general promotions, seasonal guides, website link, and telephone listing.

**OHS Act** means the Occupational Health and Safety Act 2004 (Vic).

**OHS Law** means the OHS Act, the OHS Regulations, and any other occupational health and safety law, regulation or by-law that applies to work being carried out on the Premises.

**OHS Regulations** means the Occupational Health and Safety Regulations 2007 (Vic).

**Operating Hours** means the minimum hours which the Tenant must open the Premises for business as specified in Item 20.

**Outgoings** means all amounts paid or payable by the Board during the Term in relation to the Premises (and in the event of any of the Outgoings affecting land other than the Premises the amount of such Outgoings which shall be deemed to relate specifically to the Premises shall be such proportion of the whole as the Board shall reasonably determine relates to the Premises) including:

(a) rates, land tax (on the basis that the land included in the Premises is the only land owned by the Board), and other charges imposed by any authority and levies and charges imposed under strata, community title or similar legislation; and
(b) taxes (except income or capital gains tax), levies, imposts, deductions, charges, withholdings and duties imposed by any authority including any tax imposed as a consequence of the receipt of Rent or other moneys or as a consequence of the Board having an estate or interest in the Premises; and

(c) insurance for:

(i) the full insurable value of the improvements forming the Premises (including the Board's Equipment);

(ii) public liability;

(iii) worker's compensation;

(iv) such other risks (including machinery breakdown) which the Board reasonably considers is appropriate; and

(d) maintaining and repairing the services including lighting, heating and air-conditioning including fuel, repairs and maintenance but excluding major repairs or replacement of items of a capital nature.

For the purposes of this Lease, Outgoings do not include caretaking and security services.

**Permitted Use** means the operation of a Stylish Food Operation as approved by the Board.

**Plan** means the Plan of the Premises, the Licenced Areas and the Common Area annexed hereto.

**Policy and Protocol Manual** means the written policy and procedure manual of the Board regulating the conduct of its tenants and licensees.

**Premises** means the premises specified in Item 5 and includes the Board's Fixtures.

**Previous CPI** means the CPI number for the quarter ending immediately prior to the last date that the Rent was reviewed, adjusted or increased, or the Commencement Date (whichever is the later).

**Principal Contractor** means the position of principal contractor referred to in Chapter 5 of the OHS Regulations.

**Privileged Use** means use of the Premises and Licensed Areas by the Board and its invitees, without hiring charge, as part of a function, promotion or other activity conducted, auspiced or approved by the Board.

**Rear Licenced Area** means the area delineated as such on the Plan.

**Rent** means the amount specified in Item 11 as reviewed, adjusted or increased from time to time under this Lease.

**Retail Leases Act** means *Retail Leases Act 2003* (Vic).

**Small Business Commissioner** means the Small Business Commissioner referred to in the Retail Leases Act.

**Special Conditions** means the conditions set out in Annexure 1 (if any).

**Storage Area** means the cold-room and storage area in the Rear Licensed Area as shown on the Plan.
Stylish Food Operation means a contemporary, high quality restaurant and/or café, offering a destinational experience throughout the day and which may develop into a destinational restaurant at night and which includes a high quality take away facility.

Tenant means the party specified in Item 2 and includes the Tenant's successors and assigns and where it is consistent with the context includes the Tenant's employees, contractors, agents, invitees and persons the Tenant allows in the Premises.

Tenant's Fit-Out Works means the works which are necessary to fit-out the Premises for the Permitted Use.

Tenant's Property means all property in the Premises including all fixtures and fittings owned or leased by the Tenant but excluding the Board's Fixtures.

Term means the term specified in Item 8 and includes any period of overholding.

Turnover Rent means the amount by which [##insert relevant percentage] % of the Gross Receipts exceeds the Rent each Year as follows:

\[
[\text{##insert relevant percentage} \times \% \text{ Gross Receipts} - \text{Rent} = \text{Turnover Rent}]
\]

Valuer means the valuer appointed pursuant to clause 7.3 of this Lease.

2. Grant of Lease and Licences

2.1 Lease

The Board leases the Premises to the Tenant subject to the terms contained in this Lease.

2.2 Permitted Use

The Tenant shall only use the Premises for the Permitted Use.

2.3 Access to Car Park

For the purpose of conducting the Permitted Use, the Board grants to the Tenant the Carparking Spaces and access to the Car Park along the routes delineated in blue on the Plan at Annexure 5, save that the Board may from time to time by providing the Tenant with 30 days' prior written notice of its intention to do so:

2.3.1 substitute alternative routes and shall use its best endeavours to cause as minimal disruption to the Tenant as possible in doing so;

2.3.2 regulate the size of vehicles and the hours at which they may enter the Car Park; and

2.3.3 reduce or otherwise regulate the number of carparking spaces available to the Tenant.

2.4 Common Area

The Board also agrees to allow the Tenant to occupy the Common Area (or any part thereof) from time to time with the prior written approval (which approval shall not be unreasonably withheld) of the Board for the purposes of carrying out the Permitted Use.
2.5 **Licence**

2.5.1 The Board grants to the Tenant a Licence of the Front Licensed Area for the term and upon the terms and conditions set out in Schedule 1.

2.5.2 The Board grants to the Tenant a Licence of the Rear Licensed Area for the term and upon the terms and conditions set out in Schedule 1.

2.5.3 Subject to Schedule 2, and except where the context does not permit, the terms of the Lease shall apply to the licence of the Front Licensed Area and the licence of the Rear Licensed Area.

2.6 **Approval of Governor in Council**

This Lease and the Licences are subject to and conditional upon the approval of the Governor in Council on or before the Conditions Precedent Date. If all necessary approvals are not granted by the Conditions Precedent Date, or such later date as the parties in writing agree, then this Lease and the Licences are automatically terminated and neither party shall have any claim against the other.

---

3. **Negotiation and disclosure requirements**

3.1 **Negotiation for Lease**

If the Retail Leases Act applies to this Lease, the Tenant acknowledges receiving from the Board:

3.1.1 a copy of the proposed lease; and

3.1.2 a copy of the information brochure about retail leases published by the Small Business Commissioner,

as soon as the Tenant entered into negotiations with the Board, or its agent in respect of this Lease.

3.2 **Disclosure statement**

If the Retail Leases Act applies to this Lease, the Tenant acknowledges having received from the Board:

3.2.1 a disclosure statement (in the form prescribed by the Retail Leases Act) attached as Annexure 2; and

3.2.2 a copy of the proposed lease,

at least 7 days prior to the Tenant entering into this Lease.

---

4. **Tenant's Fit-out Works**

The Tenant must, at its own cost, carry out all works which are necessary to fit out the Premises for the Permitted Use by no later than 1 month after the Commencement Date.

The Tenant must ensure that the Tenant's Fit-out Works are carried out in accordance with clause 15.4 of this Lease.
5. **Duration of the Lease**

5.1 **Term**

This Lease is for the Term starting on the Commencement Date and ending on the Expiry Date.

5.2 **Option for a Further Term**

The Board will grant to the Tenant a new lease for the Further Term if the Tenant:

5.2.1 gives the Board written notice asking for a new lease, not earlier than 6 months or later than 3 months, before the end of the Term (the last date for exercising the option for the Further Term is specified in Item 10);

5.2.2 has remedied any breach of this Lease of which the Tenant has received written notice from the Board;

5.2.3 has not persistently defaulted under this Lease during the Term; and

5.2.4 complies with all reasonable requirements of the Board including where the Tenant is a corporation, procuring such directors or shareholders of the Tenant as may be reasonably required by the Board to execute the guarantee contained in this Lease.

The new lease for the Further Term will commence on the day after this Lease ends and contain the same terms and conditions as this Lease but with no option for a further term where the last option for the Further Term has been exercised. The Rent or the method to be used to review, adjust or increase the Rent during the Further Term is specified in clauses 7 and 8.

5.3 **Execution of new Lease for Further Term**

The Tenant and the Guarantor (where applicable) must:

5.3.1 execute the new lease for the Further Term; and

5.3.2 sign any disclosure statement provided by the Board to the Tenant,

and return the above to the Board within 14 days of receipt from the Board.

5.4 **Holding Over**

If the Tenant continues to occupy the Premises after the Expiry Date with the Board's consent, except under a lease arising from the valid exercise of an option to renew, the following provisions will apply:

5.4.1 the Tenant will occupy the Premises as a monthly tenant at a total rental payable monthly in advance being an amount equal to one-twelfth of the aggregate of the Rent and any other money payable by the Tenant to the Board under this Lease at the Expiry Date, the first of the monthly payments to be made on the day following the Expiry Date;

5.4.2 as far as applicable, the monthly tenancy will otherwise continue on the terms and conditions of this Lease;

5.4.3 the Rent or any part of it for the monthly tenancy may be reviewed whenever the Board determines it appropriate and any provisions in this Lease relating to
calculation of, limitation on or right of review of the Rent or any part of it will not apply;

5.4.4 either party may terminate the monthly tenancy by giving to the other party 1 months’ notice expiring on any date; and

5.4.5 if the Tenant defaults in the performance of its obligations under the monthly tenancy, the Board may terminate the monthly tenancy by giving the Tenant 24 hours’ notice.

6. Payment of Rent

6.1 Rent

The Tenant must:

6.1.1 pay the Rent to the Board by equal calendar monthly instalments in advance (and pro-rata for any period less than one month) commencing on the Commencement Date and on the following first day of each month; and

6.1.2 pay the Rent in the manner specified in clause 14.

6.2 Marketing Contribution

The Tenant must pay the Marketing Contribution at such times and in the manner as required by the Board from time to time.

7. Market rent review

7.1 Notice by the Board

If a Market Rent Review Date is specified in Item 12, the Board may give a notice to the Tenant of the Board’s assessment of the market rent for the Premises to apply from the Market Rent Review Date. If the Board does not give a notice to the Tenant specifying the market rent, the Tenant must continue to pay the Rent payable immediately prior to the Market Rent Review Date.

7.2 Tenant’s objection

The market rent nominated by the Board in the notice to the Tenant will be the Rent which the Tenant must pay from the Market Rent Review Date, unless the Tenant gives a written notice to the Board within 14 days of receipt of the notice from the Board (time is of the essence) objecting to the market rent specified in the notice from the Board. If the Tenant does not give the Board the written notice, the Board and the Tenant agree that the Rent will be the market rent nominated by the Board.

7.3 Appointing Valuer

If the Tenant objects to the market rent specified by the Board within the time and manner specified in the preceding sub-clause, then the Rent must be determined by a valuer, who is appointed by the parties jointly and where the parties cannot agree on a valuer within 14 days of the Board receiving the Tenant’s notice objecting to the rent, either party may request:
7.3.1 the President of the Australian Property Institute (Victorian Division) or its successor body, to appoint a valuer; or

7.3.2 where the Retail Leases Act applies to this Lease, the Small Business Commissioner to appoint a specialist retail valuer pursuant to section 37 of the Retail Leases Act.

7.4 Determination by Valuer

The Board and the Tenant must instruct the Valuer to:

7.4.1 determine a market rent for the Premises to apply on and from the Market Rent Review Date in accordance with clause 7.7;

7.4.2 determine a market rent which is not less than the rent payable immediately prior to the Market Rent Review Date except this sub-clause 7.4.2 will not apply where the Retail Leases Act applies to this Lease;

7.4.3 not reduce the market rent on account of any rent incentive (including a rent free period) payable to the Tenant or tenants of comparable premises except this sub-clause 7.4.3 will not apply where the Retail Leases Act applies to this Lease; and

7.4.4 act as an expert and not an arbitrator (the Valuer's decision is binding on the Board and the Tenant). The Board and the Tenant must share the costs of the Valuer equally.

7.5 The Board's and Tenant's submissions

7.5.1 The Valuer may confer with the Board and the Tenant and may require either party to supply information which the Valuer considers relevant to the determination.

7.5.2 Any request for information must be complied with promptly in writing by the party to whom it is directed, who will make a copy of that information available to the other party.

7.5.3 Either party may supply the Valuer with other information which it considers relevant and, if it does so, must make a copy of that information available to the other party.

7.5.4 Information may be provided on a confidential basis and, if so, the party receiving it and the Valuer will treat the information as confidential and will not use that information other than for the purposes of this clause 7.

7.6 Written submissions

7.6.1 The Board and the Tenant may make written submissions to the Valuer in relation to the market rent within 30 days of receipt of written notice of the Valuer's acceptance of the Valuer's appointment.

7.6.2 The Valuer must not determine the market rent until the expiration of that period of 30 days.

7.7 Valuer's criteria

7.7.1 Where the Retail Leases Act applies to this Lease, in determining the market rent as at the Market Rent Review Date, the Valuer will have regard to the matters set out in section 37(2) of the Retail Leases Act.
7.7.2 Where the Retail Leases Act does not apply to this Lease, in determining the market rent as at a Market Rent Review Date, the Valuer may take into account any matters the Valuer considers relevant including taking into account or disregarding any written submissions received from the Board or the Tenant but the Valuer must:

(a) disregard:

(i) any goodwill attributable to the Premises by reason of the trade, business or activity carried on by the Tenant and the value of the Premises and the Tenant's Property;

(ii) any state of disrepair of the Premises if that condition results from any work carried out or not carried out on the Premises by the Tenant or from the Tenant's breach of any provision of this Lease;

(iii) any money received under any sublease, subtenancy agreement or occupational arrangement in respect of the Premises which has not been approved by the Board;

(iv) any inducement provided or to be provided to the Tenant in connection with the granting of this Lease;

(v) the restriction on the use of the Premises under clause 18.1; and

(vi) anything (including part of a submission received from the Board or the Tenant) which is not consistent with the matters to be disregarded or taken into account under this clause 7.7;

(b) take into account the following matters or, where the context requires, make the following assumptions:

(i) the provisions of this Lease;

(ii) the Term and any option for renewal (disregarding the elapsed part of the Term);

(iii) the rent and outgoings paid or payable in respect of other premises of a quality, nature and size similar to the Premises (including any car parking areas, landscape areas or other areas made available to the Tenant) and leased at their highest and best use;

(iv) the use permitted by the relevant laws and the provisions of this Lease;

(v) assume that the Tenant has observed and performed all of the provisions of this Lease; and

(vi) the value of the local goodwill attaching to the Premises (as distinct from the personal goodwill attached to the Tenant's business conducted at or from the Premises) attributable to the location, facilities, management and promotion of the Premises.

7.8 Payment of Rent pending valuation

Where the Tenant objects to the Board's assessment of the Rent, until the Rent is agreed, or has been determined by the Valuer, the Tenant must continue to pay to the Board the Rent payable immediately prior to the Market Rent Review Date. On the next due date for the
payment of the Rent following the Board and the Tenant agreeing on the Rent, or the Valuer determining of the Rent pursuant to the preceding sub-clause, the Board and the Tenant must make any necessary adjustments, including payment of interest calculated in accordance with clause 14.2 on any money owing by either party calculated from the Market Rent Review Date.

7.9 **Appointing new Valuer**

If the Valuer does not make a determination within 45 days of appointment, resigns or otherwise becomes unable to make the determination, an alternative valuer may be appointed pursuant to clause 7.3.

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8. **CPI adjustment of Rent**

8.1 **Calculation of adjustment**

If a CPI Adjustment Date is specified in Item 13, the Rent on the CPI Adjustment Date will be adjusted to an amount equal to the Rent payable immediately prior to the CPI Adjustment Date multiplied by the Current CPI and divided by the Previous CPI.

8.2 **Payment of adjusted Rent**

On the next due date for the payment of the Rent, after the Tenant receives notice of the adjusted Rent from the Board, the Board and the Tenant must make any necessary adjustment to apply on and from the CPI Adjustment Date, including payment of interest calculated in accordance with clause 14.2 on any money owing by either party calculated from the CPI Adjustment Date.

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9. **Turnover Rent**

9.1 For the purposes of this clause Year means each twelve month period during the Term commencing on 1 July 2014.

9.2 The Tenant must pay to the Board the Turnover Rent for each Year within 28 days of the end of the Year in the same manner as the Tenant pays the Rent under this Lease.

9.3 The Tenant must:

9.3.1 keep and maintain proper books of accounts and records of the Gross Receipts and preserve the books and records for at least 12 months after the end of the Term; and

9.3.2 upon receiving 14 days' notice, produce to the Board the books of accounts and records for inspection and audit by the Board.

9.4 The Tenant must provide a statement of the Gross Receipts to the Board:

9.4.1 within 14 days of the end of each month certified as being correct by the Tenant; and

9.4.2 within 28 days of the end of each Year accompanied by an audit report prepared by an independent accountant stating that in his or her opinion the statement fairly presents the Gross Receipts of the business during that Year.

9.5 The Tenant must pay to the Board within 14 days of demand:
9.5.1 the cost of the audit conducted by the Board if the audit shows that the Gross Receipts have been understated by more than 3%; and

9.5.2 any additional Turnover Rent that may be payable due to the Gross Receipts being understated as determined by the Board's audit.

9.6 The parties agree that a certificate given by the Board's auditor is conclusive evidence of the Gross Receipts except in the case of a manifest error.

9.7 The Board must keep the Gross Receipts and Turnover Rent payable by the Tenant confidential except if the Tenant consents to the Board disclosing the Gross Receipts and Turnover Rent payable by the Tenant:

9.7.1 to its employees, agents, consultants, and advisers where reasonably required to be disclosed;

9.7.2 to potential purchasers of the Premises;

9.7.3 as required by law;

9.7.4 to a court, a tribunal or other such body in order to determine a dispute; and

9.7.5 where the Retail Leases Act applies to this Lease, as permitted by the Retail Leases Act.

9.8 This clause 9 is an essential term of this Lease.

10. Outgoings

The Tenant must pay to the Board, or at the Board’s election reimburse the Board, for Outgoings before they become due or within seven days of demand.

10.1 Proportion of Rates and Taxes

If any Outgoings are not separately assessed in connection with the Premises, the Tenant must pay to the Board within 14 days of demand the proportion of the Outgoings that the Lettable Area of the Premises bears to the total area assessed.

10.2 Receipt for payment

The Tenant must provide to the Board:

10.2.1 copies of all notices, assessments or invoices for any Outgoings received by the Tenant directly from the relevant authority within 14 days of receipt; and

10.2.2 receipts for any Outgoings paid by the Tenant within 7 days of request by the Board.

10.3 Part Year

The Tenant shall pay the relevant proportion of any Outgoings which are assessed in respect of a period which includes a period which does not fall within the Term.
11. **Other expenses**

11.1 **Services**

The Tenant must, within 14 days of demand:

11.1.1 pay for all services in connection with the Premises, including electricity, gas, water and telephone services; and

11.1.2 where the Premises are not separately metered, pay for the cost of installing separate meters to assess the charges for the services.

11.2 **Costs and duty**

The Tenant must pay to the Board within 14 days of demand:

11.2.1 the Board's reasonable costs of preparing, negotiating and entering into this Lease except this amount is not recoverable where the Retail Leases Act applies to this Lease;

11.2.2 the stamp duty payable on this Lease (including penalties and fees);

11.2.3 the Board's reasonable costs in considering the granting of any consent or approval under this Lease (regardless of whether the Board actually gives such consent or approval);

11.2.4 the cost of any insurance premium to insure the Premises against damage or destruction;

11.2.5 the cost of carrying out any repairs to the Board's Fixtures except to the extent that such costs are not recoverable under the Retail Leases Act;

11.2.6 the cost of complying with the provisions of the Building Act and the Building Regulations in relation to any Essential Safety Measure;

11.2.7 the cost of obtaining the Board's mortgagee's consent to this Lease (if required) except this amount is not recoverable where the Act applies to this Lease;

11.2.8 the Board's architects or contractor's fees payable pursuant to clause 15.4.5; and

11.2.9 the Board's costs (including charges on a solicitor-own client basis) incurred as a result of a breach of this Lease by the Tenant.

12. **GST**

12.1 **Definitions**

In this clause:

12.1.1 words and expressions that are not defined in this Lease but which have a defined meaning in the GST Law have the same meaning as in the GST Law; and

12.1.2 **GST Law** has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
12.2 GST exclusive

Except as otherwise provided by this clause, all consideration payable under this Lease in relation to any supply is exclusive of GST.

12.3 Increase in consideration

If GST is payable in respect of any supply made by a supplier under this Lease (GST Amount), the recipient will pay to the supplier an amount equal to the GST payable on the supply.

12.4 Payment of GST

Subject to clause 12.5 the recipient will pay the GST Amount at the same time and in the same manner as the consideration for the supply is to be provided under this Lease.

12.5 Tax Invoice

The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST Amount under clause 12.4.

12.6 Reimbursements

If this Lease requires a party to reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:

12.6.1 the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party is entitled; and

12.6.2 if the payment or reimbursement is subject to GST, an amount equal to that GST.

12.7 Adjustment events

If an adjustment event occurs in relation to a taxable supply under this Lease:

12.7.1 the supplier must provide an adjustment note to the recipient within 7 days of becoming aware of the adjustment; and

12.7.2 any payment necessary to give effect to the adjustment must be made within 7 days after the date of receipt of the adjustment note.

13. Bank Guarantee

13.1 Delivery of Bank Guarantee

The Tenant must deliver to the Board the Bank Guarantee on or before the Commencement Date which must:

13.1.1 be expressed to be in favour of the Board and its successors and assigns;

13.1.2 not have an expiry date earlier than 6 months after the Expiry Date; and

13.1.3 contain such other terms and conditions as the Board may reasonably require.
13.2 The Board's right to call up Bank Guarantee

The Board may call up the Bank Guarantee if any of the default events specified in clause 27.1 or 27.2 occur or any money owing by the Tenant to the Board under this Lease is due and unpaid.

13.3 Tenant not to injunct

The Tenant must not take any steps to injunct or otherwise restrain:

13.3.1 any issuer of the Bank Guarantee from paying the Board pursuant to the Bank Guarantee;

13.3.2 the Board from taking any steps for the purpose of making demand under the Bank Guarantee; or

13.3.3 the Board using the money received under the Bank Guarantee.

13.4 Tenant to replace Bank Guarantee

The Tenant must, within 14 days of demand, replace the Bank Guarantee if called up by the Board, or restore the Bank Guarantee to the required amount.

13.5 Return of Bank Guarantee

The Board must, if the Tenant has complied with all of its obligations under this Lease, return to the Tenant the Bank Guarantee within 60 days of the end of this Lease.

13.6 Sale of the Premises

The Tenant must provide a replacement Bank Guarantee to any future owner of the Premises.

13.7 Increased Bank Guarantee

If the Bank Guarantee is determined as a proportion of the Rent payable under this Lease and at any time during the Term the Rent is adjusted or increased, then within 7 days of the adjustment or increase the Tenant will deliver to the Board an additional or replacement Bank Guarantee to ensure that the amount of the Bank Guarantee held by the Board is the proportion specified in Item 15.

14. Payment requirements

14.1 No deduction or right of set-off

The Tenant must pay all amounts due under this Lease to the Board (including the Rent and Rates and Taxes) without deduction or right of set-off.

14.2 Interest on late payments

The Tenant must pay to the Board on demand interest at the rate per annum equal to the current rate fixed under section 2 of the Penalty Interest Rates Act 1983 (Vic) plus 2% per annum on any money payable by the Tenant under this Lease and remaining unpaid after the due date. Interest will be computed from the date on which such payment became due.
14.3 Payment after Termination

The Tenant must:

14.3.1 make all payments due under this Lease; and

14.3.2 provide all information to the Board under this Lease to calculate any such payments,

even if this Lease has ended.

14.4 Method of payment

The Tenant must make all payments under this Lease in such manner as the Board reasonably requires. Until otherwise advised by the Board the Tenant shall make such payment by automatic direct debit.

15. Repairs, refurbishment and alterations

15.1 Condition report

The Tenant acknowledges and agrees that the condition report attached to this Lease in Annexure 3 reflects the true condition of the Premises as at the Commencement Date.

15.2 Repairs and Maintenance

The Tenant must:

15.2.1 keep the Premises and the Tenant's Property clean and free from rubbish, store all rubbish in proper containers and have it regularly removed;

15.2.2 keep the Premises in the same condition as it was in at the date the Tenant first entered occupation of the Premises (fair wear and tear excepted) including repairing or replacing anything in the Premises (including all furnishings and floor coverings) which are damaged, worn or destroyed with items of at least the same quality;

15.2.3 paint and where appropriate paper, any parts of the Premises previously painted or papered whenever reasonably required by the Board;

15.2.4 maintain in working order all plumbing, drains, pipes and sewers exclusively servicing the Premises;

15.2.5 pay the costs (if any) for the removal of waste and sewerage from the Premises;

15.2.6 maintain any gardens in the Premises in good condition well watered and free of weeds, or pay the actual costs of a Board employee(s) being engaged to undertake such garden maintenance;

15.2.7 treat in a proper and professional manner (including polishing or varnishing as appropriate) all surfaces of the Premises (including wood, tile and metal surfaces) with the appropriate materials approved by the Board when reasonably required by the Board;

15.2.8 promptly repair all defective lights, fluorescent tubes, windows, doors and locks in or exclusively servicing the Premises;
15.2.9 make good any damage caused to any adjacent property by the Tenant;

15.2.10 take all reasonable measures to ensure that any fair wear and tear to the Premises does not cause any loss or damage to the Premises, the Building, or any person; and

15.2.11 give the Board prompt written notice of any material damage to the Premises or anything likely to be a risk to the Premises or any person in the Premises.

15.3 Equipment in Premises

The Tenant must:

15.3.1 repair and maintain the Board's Fixtures including air conditioning and heating equipment serving the Premises (but excluding expenses of a capital nature) in accordance with the Board's reasonable requirements, provided that if any of the Board's Fixtures also serve other areas the Tenant must pay an appropriate pro rata share; and

15.3.2 comply with the Board's reasonable requirements concerning the use of the Board's Fixtures, including air conditioning and heating equipment.

15.4 Alterations to Premises

The Tenant must ensure any alterations or works to the Premises, any services to the Premises or the Tenant's Property are carried out only with the Board's prior written consent:

15.4.1 strictly in accordance with plans and specifications approved by the Board;

15.4.2 in a manner which minimises impact on visitors to the Gardens and activities being carried on in the Gardens,

15.4.3 by qualified tradespersons approved by the Board;

15.4.4 to the Board's reasonable satisfaction and in accordance with the Board's reasonable requirements (including the Board's requirements as to the standard, type, quality, size and colour of any of the Tenant's Property);

15.4.5 under the supervision of the Board's architect or consultant (the cost of which must be paid by the Tenant to the Board within 14 days of demand); and

15.4.6 in accordance with all rules and requirements of any authorities having jurisdiction over the Premises.

The Tenant is not required to seek the Board's consent to making any alterations to the display of the Tenant's merchandise in the Premises.

15.5 Occupational health and safety

For the purposes of the OHS Law, the Tenant agrees that:

15.5.1 the Tenant has sole management and control of the Premises and has sole responsibility for ensuring that the Premises and the means of entering and leaving them are safe and without risks to health;

15.5.2 the Board appoints the Tenant as Principal Contractor in respect of any works to be carried out by the Tenant on the Premises to which an OHS Law applies;
15.5.3 the Tenant is must carry out such works in accordance with the requirements of the OHS Law; and

15.5.4 the Board authorises the Tenant to exercise whatever authority is necessary for the Tenant to discharge the responsibilities of the appointment under clause 15.5.2.

15.6 Not interfere with services

The Tenant must not interfere with, misuse or overload any services to the Premises, including electricity, gas and water.

15.7 Defacing Premises

The Tenant must not deface or damage the Premises (including drilling holes in the Premises) except where approved by the Board in accordance with clause 15.4.4.

15.8 Failure to repair and maintain

If the Tenant does not carry out any repairs, maintenance or other works required under this Lease within 14 days of receiving written notice from the Board, the Board may enter the Premises to carry out such repairs, maintenance and works at any reasonable time after giving the Tenant reasonable notice. The cost of all such repairs, maintenance and works must be paid by the Tenant to the Board on demand.

16. Insurance

16.1 Public liability and glass insurance

16.1.1 The Tenant must maintain insurance in the joint names of the Board and the Tenant with an insurer approved by the Board for:

(a) public liability for the amount of $20 million concerning 1 single event (or such greater sum as reasonably required by the Board); and

(b) any windows and any other glass in the Premises for the full replacement value.

16.1.2 The Tenant must ensure that the policies effected under clause 16.1.1 contain a cross-liability clause extending the policy so that the words 'the insured' are considered as applying to each party comprising the insured, as though a separate policy has been issued to each of the parties, in the same manner as if that party were the only party named as the insured.

16.2 Tenant's Property

The Tenant must insure the Tenant's Property for loss and damage from risks including fire and water damage for its full replacement value.

16.3 Condition in policies

The Tenant must ensure that the insurance policies effected by the Tenant contain a condition that the insurer will notify the Board at least 14 days before the policies lapse.
16.4 Payment and production of policies

The Tenant must pay all insurance premiums on or before the due date for payment and produce to the Board copies of the certificate of currency on or before each anniversary of the Commencement Date.

16.5 Not invalidate policies

The Tenant must:

16.5.1 not do anything which may make any insurance effected by the Board or the Tenant invalid, capable by being cancelled or rendered ineffective, or which may increase any insurance premium payable by the Board; and

16.5.2 pay any increase in the insurance premium caused by the Tenant's act, default or use of the Premises.

16.6 Requirements by insurer

The Tenant must comply with all reasonable requirements of the Board's insurer in connection with the Premises.

17. Release, indemnity, compensation and liability

17.1 Release

The Tenant uses and occupies the Premises at its own risk and releases the Board from all claims resulting from any damage, loss, death or injury in connection with the Premises except to the extent that such claims arise out of the Board's negligence.

17.2 Indemnity

The Tenant must indemnify and hold harmless the Board against all claims resulting from any damage, loss, death or injury in connection with the Premises and the use and occupation of the Premises by the Tenant except to the extent that such claims arise out of the Board's negligence.

17.3 No compensation

The Board is not liable to the Tenant for any loss or damage incurred by the Tenant due to:

17.3.1 any damage to the Premises;

17.3.2 the failure of the Board's Fixtures or any plant and equipment (including air conditioning and escalators) to operate properly;

17.3.3 the interruption or damage to any services (including electricity, gas or water) to the Premises; or

17.3.4 the overflow or leakage of water in the Premises,

except to the extent to which the Board is liable where the Retail Leases Act applies.

17.4 No liability

The Tenant acknowledges and agrees that:
17.4.1 nothing in this Lease in any way limits, fetters or restricts the power or discretion of
the Board in the exercise of its statutory rights, duties or powers under the Act or
the Planning and Environment Act 1987 (Vic) or the exercise of any other statutory
right, power or duty that the Board may lawfully exercise; and

17.4.2 the Board will not be liable to the Tenant under this Lease (including but not limited
to a breach of the covenant of quiet enjoyment or a derogation of the grant of this
Lease) for any acts or omissions of the Board undertaken in any capacity including
(but not limited to) in exercising any powers referred to in clause 17.4.1,

except nothing in this clause releases the Board from any obligations it owes to the Tenant
under this Lease in its capacity as the owner of the Premises.

18. Use of Premises

18.1 Permitted Use

The Tenant must use the Premises for the Permitted Use and not use the Premises for any
other purpose.

18.2 No warranty

The Tenant:

18.2.1 acknowledges that the Board does not represent that the Premises are suitable for
the Permitted Use; and

18.2.2 must make its own enquiries as to the suitability of the Premises for the Permitted
Use.

18.3 Illegal purpose

The Tenant must not use the Premises for any illegal purpose or carry on any noxious,
offensive or illegal activity on the Premises.

18.4 Privileged Uses

18.4.1 The Tenant must allow the Board to use the Premises and the Licensed Areas (or
any part thereof) for the number of Privileged Uses specified in Item 19 during each
year of the Term at such times as are reasonably agreed between the Board and
the Tenant.

18.4.2 If requested by the Board, the Tenant must provide appropriate catering services
on such occasions at cost.

18.4.3 The Board may supply its own alcohol on such occasions without any fee or
corkage being imposed by the Tenant.

19. Operating Hours

19.1.1 The Tenant must keep the Premises open for business during the Operating Hours
or such other hours as are agreed by the parties from time to time, except on days
which are gazetted as Public Holidays in Melbourne.
20. Naming Rights

20.1.1 Subject to the Board's prior written consent, the Tenant shall have naming rights in respect of the Premises.

20.1.2 The Board must approve the name and any change of name of the Premises.

20.1.3 The Board does not represent that the name ‘Observatory Café’ is available for use by the Tenant.

20.1.4 At the end of the Term and any Further Term the Tenant must, if requested by the Board, transfer all of its right, title and interest in the name of the Premises to the Board without charge.

21. Liquor Licence

21.1 Transfer

The Tenant shall take a transfer of the liquor licence held by the previous occupier of the Premises and the Board will sign and deliver to the Tenant all documents and instruments and provide such other assistance as the Tenant reasonably requires.

21.2 The Tenant must:

21.2.1 seek the prior written consent of the Board before applying for any licence or permit under the Liquor Control Reform Act 1998 (Vic) (licence or permit), or applying for any variation, removal, transfer, surrender or release of the licence or permit or nominating any person to be a licensee or permittee;

21.2.2 produce the licence or permit to the Board for inspection upon demand;

21.2.3 comply with any conditions of the licence or permit imposed by the Board;

21.2.4 comply with all conditions of the licence or permit and all laws relating to the licence or permit;

21.2.5 not allow the licence or permit to be cancelled or suspended;

21.2.6 renew the licence or permit and notify the Board in writing within 14 days of the renewal;

21.2.7 promptly notify the Board in writing if the licence or permit is cancelled or suspended or if the Tenant receives any notice, summons or fine in relation to the licence or permit;

21.2.8 indemnify the Board for any damages or costs incurred in relation to the licence or permit or a breach of this clause by the Tenant; and

21.2.9 surrender the licence or permit within 21 days of receiving a written notice from the Board, which the Board may give to the Tenant if the Tenant's use of the Premises is causing or likely to cause a nuisance to local residents.
22. Other obligations concerning the Premises

22.1 Policy and Protocol Manual

22.1.1 The Tenant must comply with the terms of the Policy and Protocol Manual.

22.1.2 The Board will not amend the Policy and Protocol Manual without first advising the Tenant and taking account of reasonable comments of the Tenant. After such consultation, the Board may amend the Policy and Protocol Manual by giving the Tenant not less than one month's notice of the amendment.

22.2 KPIs

Without limiting the other obligations of the Tenant under this Lease, the Tenant must:

22.2.1 exercise the diligence and care commensurate with professional operators experienced in providing similar services;

22.2.2 undertake all of its activities and carry out the Permitted Use in a way which is consistent with the Board's objectives and obligations under the Act;

22.2.3 carry out the Permitted Use at or above the levels set out in the KPIs;

22.2.4 comply with current best practice relating to the performance of the Permitted Use;

22.2.5 ensure that functions conducted at the Premises are conducted in a manner which avoids noise, distraction and interruption to persons carrying on other lawful activities in the Gardens, including activities associated with periodic tenancies.

22.3 Revision of the KPIs

22.3.1 The Board may amend the KPIs from time to time to take account of:

(a) improvements in recognised best practice for the provision of services; and

(b) changes in the services.

22.3.2 The Board will not amend the KPIs without first consulting with the Tenant and taking account of the reasonable comments of the Tenant. After such consultation, the Board may amend the KPIs by giving the Tenant not less than one month's notice of the amendment.

22.4 Reporting on KPIs

The Tenant must provide to the Board a quarterly report, in a form required by the Board, on its performance against the KPIs.

22.5 Compliance with laws

The Tenant must comply with all laws and any requirements of any authority in connection with the Premises and the Tenant's use and occupation of the Premises, except the Tenant will not be required to carry out any structural works unless the need for such works arises from:

22.5.1 the negligent act or omission of the Tenant;

22.5.2 the failure by the Tenant to comply with its obligations under this Lease; or
22.5.3 the Tenant's use of the Premises.

22.6 Licences and permits

The Tenant must maintain all licences and permits required for the Tenant's use of the Premises and obtain the prior written consent of the Board before varying any licence or permit or applying for any new licence or permit.

22.7 Nuisance

The Tenant must not do anything in connection with the Premises which may:

22.7.1 cause a nuisance or interfere with any other person; or

22.7.2 be dangerous or offensive in the Board's reasonable opinion.

22.8 Security

The Tenant must keep the Premises secure at all times when the Premises are not being used by the Tenant.

22.9 Signs

The Tenant must seek the prior written consent of the Board before displaying or affixing any signs, advertisements or notices to any part of the Premises where such signs, advertisements or notices are visible from outside the Premises.

22.10 No vending machines

The Tenant must not permit any vending or amusement machines in the Premises.

22.11 No auctions

The Tenant must not conduct any auctions or fire sales in the Premises.

22.12 No smoking

The Tenant must:

22.12.1 not permit any smoking in the Premises; and

22.12.2 display 'no smoking' signs in the Premises if requested by the Board.

22.13 Heavy objects and inflammable substances

The Tenant must not:

22.13.1 store any inflammable or explosive substances in the Premises unless required for the Permitted Use; or

22.13.2 store any heavy objects in the Premises or anything likely to damage the Premises.

22.14 Television and radio

The Tenant must not install any televisions, radios, music systems or other equipment in the Premises which can be heard outside the Premises without obtaining the prior written consent of the Board.
22.15 Endanger Premises

The Tenant must not do or permit anything to be done in connection with the Premises which in the opinion of the Board may endanger the Premises or be a risk to any person or property.

22.16 Tenant’s employees

The Tenant must use all reasonable endeavours to ensure that the Tenant's employees, agents, contractors and invitees observe and comply with the Tenant's obligations under this Lease, where appropriate.

22.17 Cleaning

The Tenant, at its own expense, provide for the daily cleaning of the Premises. Cleaning must be carried out to a high standard so that the standard of cleanliness complies at all times with all relevant legislation and regulations and befits a stylish food operation.

If at any time the Tenant uses the Common Area for the Permitted Use, it shall arrange for cleaning of the Common Area and shall leave the Common Area clean and tidy.

22.18 Quarterly Meeting

The Board and the Tenant must meet quarterly to discuss the KPI report referred to in this clause, other matters of concern to either party and opportunities to co-operate in activities and initiatives for their mutual benefit.

23. Tenant’s environmental obligations

23.1 Comply with Environmental Protection Legislation and Environmental Stewardship Policy

The Tenant must, in its use of the Premises, comply with all Environmental Protection Legislation, any permit, approval, authority or licence issued pursuant to any Environmental Protection Legislation and the Environmental Stewardship Policy.

23.2 Not permit Contamination

The Tenant must not spill or deposit, or carry out any activities on the Premises which may cause any Contamination, or permit any Contamination to escape in any other way into or on the Premises, drainage or surrounding environment.

23.3 Notify of and clean up Contamination

If any Contamination is found in or near the Premises, or the existing Contamination is exacerbated during the Term, the Tenant must at its own cost:

23.3.1 immediately notify the Board and any other appropriate Authority;

23.3.2 clean up the Contamination and do everything necessary to minimise harm and remedy the environment; and

23.3.3 promptly comply with any notice, order, direction or requirement of the Board and of any authority in relation to any such Contamination.
23.4 **Indemnify the Board**

In addition to any other indemnity in this Lease, the Tenant indemnifies the Board against all claims for damages, loss, injury or death caused by or arising out of or otherwise in respect of any Contamination being spilled, deposited or otherwise escaping into or on the Premises or a breach of this clause by the Tenant.

23.5 **Obtain reports, surveys or audits**

The Tenant must immediately obtain any reports, surveys or audits which the Board may reasonably require to enable the Board to determine whether a breach of the terms of this clause has occurred. The Tenant will also pay the Board on demand the reasonable costs of any such report, survey or audit which the Board may obtain.

24. **Dealing with interest in the Premises**

24.1 **No parting with possession**

The Tenant must not give up possession of the Premises including assigning this Lease, sub-letting the Premises or granting to any person a licence or concession in respect of the Premises, subject to clause 24.2.

24.2 **Conditions of assignment**

Where the Retail Leases Act applies to this Lease, the Board will not unreasonably withhold its consent to an assignment of this Lease if the Tenant:

24.2.1 has complied with clause 24.4 and the Board has not accepted the offer;

24.2.2 requests the Board in writing to consent to the assignment of the Lease to a new tenant;

24.2.3 has remedied any breach of this Lease of which the Tenant has received written notice from the Board;

24.2.4 provides to the Board the name and address of the new tenant and proves to the Board’s reasonable satisfaction that the new tenant is solvent and able to comply with its obligations under this Lease by providing at least 2 references as to the financial circumstances of the new tenant and at least 2 references as to the business experience of the new tenant;

24.2.5 executes and procures the new tenant to execute an assignment of lease which must include a condition by which the Tenant releases the Board from any claims arising under or in connection with the Lease and otherwise in a form approved by the Board;

24.2.6 procures the new tenant to provide such additional security as the Board may reasonably require;

24.2.7 where the new tenant is a corporation procures such directors or shareholders of the new tenant, as may be reasonably required by the Board, to execute a guarantee substantially in the form of the guarantee contained in this Lease;

24.2.8 pays the Board’s reasonable costs in connection with approving the new tenant and the costs of the preparation, negotiation and stamping of any document required under this clause; and
24.2.9 Where the Retail Leases Act applies to this Lease, provides the new tenant with a copy of the disclosure statement as required by section 61(3) of the Retail Leases Act.

24.3 No assignment if Retail Leases Act to apply

Despite anything to the contrary in this Lease, if the Retail Leases Act does not apply to this Lease and an assignment of this Lease would result in the Retail Leases Act applying to this Lease (either during the Term or as a result of the grant of a lease for the Further Term) the Board may withhold its consent to an assignment of this Lease.

24.4 Right of first refusal

The Tenant must, prior to applying for the Board's consent for an assignment of this Lease, give written notice to the Board offering to assign this Lease to the Board, or its nominee on the same terms as the proposed assignment. The offer must remain open for acceptance by the Board for 14 days.

24.5 Change in shareholding

If the Tenant is a corporation (other than a corporation listed on any stock exchange in Australia) a change in the control of the corporation as existed at the Commencement Date (whether occurring at the one time or through a series or succession of issues or transfers) or a change in the holding of more than one-half of the issued share capital, either beneficially or otherwise, will be deemed to be an assignment of this Lease and the Tenant must seek the Board's prior written consent in accordance with this clause 24.

24.6 Mortgage of Lease

The Tenant must not create any security over this Lease or the Tenant's Property.

25. Tenant's obligations at the end of this Lease

25.1 Tenant's obligations

At the end of this Lease, the Tenant must:

25.1.1 Vacate the Premises and give them back to the Board in a condition consistent with the Tenant having complied with its obligations under this Lease;

25.1.2 Remove the Tenant's Property (including all signs and lettering) and reinstate the Premises to the condition the Premises were in prior to the installation of the Tenant's Property including making good any damage caused by the removal of the Tenant's Property; and

25.1.3 Give to the Board all keys and other security devices for the purposes of obtaining access to the Premises.

25.2 Tenant's Property left in Premises

Anything left in the Premises after 7 days of the end of this Lease will be deemed to be abandoned by the Tenant and will become the property of the Board and may be removed by the Board at the Tenant's cost and at the Tenant's risk and the parties agree that this clause 25.2 is an agreement about the disposal of uncollected goods for the purposes of section 56(6) of the Australian Consumer Law and Fair Trading Act 2012 (Vic).
26. The Board's rights and obligations

26.1 Quiet enjoyment

As long as the Tenant does not breach this Lease, the Board must not interfere with the Tenant's use and occupation of the Premises except as provided by this Lease.

26.2 Alterations to the improvements

The Board may carry out any works, alterations, renovation or refurbishment of the Land which may include extending or reducing any buildings on the Land.

26.3 Dealing with the Land

The Board may:

26.3.1 subdivide the Land or grant easements or other rights over the Land or the Premises except where it will unreasonably interfere with the Tenant's use and occupation of the Premises;

26.3.2 install, repair and replace pipes, cables and conduits in the Premises; and

26.3.3 use the roof and external walls of the Premises for any purposes the Board determines.

26.4 Entry by the Board

The Board may enter the Premises at any reasonable time after giving the Tenant reasonable notice to:

26.4.1 inspect the condition of the Premises;

26.4.2 rectify any default by the Tenant under this Lease;

26.4.3 undertake an environmental inspection or accreditation or monitor the environmental management of the Premises, including energy and water use;

26.4.4 carry out any inspection, repairs, maintenance, works or alterations in the Premises which the Board decides to or is required to carry out by any law or authority.

The Board must use all reasonable endeavours to cause as little disruption as possible to the Tenant's use of the Premises in exercising the Board's rights under this clause.

26.5 Emergency entry

The Board may enter the Premises at any time without giving notice to the Tenant in an emergency.

26.6 Reletting and sale

The Board may:

26.6.1 affix a 'For Lease' sign on the Premises and show the Premises to intending tenants at any reasonable time upon reasonable notice to the Tenant during the 6 months prior to the end of the Term (except where the Tenant has validly exercised an option for a Further Term); and
26.6.2 affix a 'For Sale' sign on the Premises and show the Premises to intending
purchasers of the Premises at any reasonable time upon reasonable notice to the
Tenant during the Term.

Any sign erected by the Board must not unreasonably interfere with the Tenant's use and
occupation of the Premises.

26.7 The Board's consent

Unless otherwise provided for in this Lease, where the Board is required to give its consent
under this Lease, the Board may give or refuse its consent subject to such conditions as the
Board may determine in its absolute discretion.

26.8 Change in landlord

If a person other than the Board becomes entitled to receive the rents reserved by this Lease
whether by operation of law or otherwise (New Landlord) then:

26.8.1 the Board is released from all further obligations under this Lease arising after the
New Landlord becomes landlord; and

26.8.2 the Tenant must at the cost of the Board enter into a deed reasonably required by
the Board under which the Tenant covenants that the New Landlord shall have the
benefit of all of the Tenant's obligations under this Lease; and

26.8.3 the Tenant must provide a Bank Guarantee in favour of the New Landlord, to
replace the Tenant's existing Bank Guarantee.

27. Termination of Lease

27.1 Re-entry

The Board may re-enter the Premises and terminate this Lease if:

27.1.1 any part of the Rent is in arrears for 14 days (whether or not the Board has
demanded payment); or

27.1.2 an Insolvency Event occurs in relation to the Tenant or any Guarantor; or

27.1.3 the Tenant breaches this Lease and does not remedy the breach within 14 days of
receipt of written notice from the Board.

27.2 Damages following determination

If this Lease is terminated by the Board, the Tenant agrees to compensate the Board for any
loss or damage the Board suffers arising in connection with the Tenant's breach of this
Lease including the loss of the benefit of the Tenant performing its obligations under this
Lease up to the expiration of the Term.

27.3 Essential terms

The essential terms of this Lease are clauses 6, 9, 10.1, 10.2, 11.1, 11.2, 12, 15.2, 15.3,
15.4, 16, 18.1, 18.3, 18.4, 19, 21, 23, 24, 25 and 28 and any Special Conditions incorporated
into this Lease. The breach of an essential term is a repudiation of this Lease.
27.4 No deemed termination

If the Tenant vacates the Premises, the Board will not be deemed to have terminated this Lease merely by the acceptance of keys from the Tenant, entry into the Premises for any purpose, or the showing of the Premises to prospective tenants or purchasers. This Lease will be deemed to continue until such time as the Board gives notice to the Tenant terminating this Lease, or otherwise agrees with the Tenant that this Lease is terminated.

28. Relocation

28.1 Relocation

If the Board wants to redevelop the Land and/or the Premises, subdivide the Land, grant easements or other rights over the Land or carry out any works on the Land and/or the Premises, which the Board cannot adequately carry out due to the Tenant's occupation of the Premises under this Lease, the Board may give written notice to the Tenant:

28.1.1 requiring the Tenant to surrender this Lease by executing a deed of surrender in a form prepared by the Board (Deed) on a date being not earlier than 6 months after receipt of the notice by the Tenant; and

28.1.2 offering the Tenant a new lease of alternative premises on suitable land (Alternative Premises) which must, as far as practicable, be suitable for the Permitted Use.

The Board must also provide to the Tenant at the time of giving the Tenant the notice specified above, reasonable details of the Board's proposal for any redevelopment, works or other use determined by the Board.

28.2 Terms of New Lease on the Land

The new lease of the Alternative Premises offered to the Tenant under the preceding sub-clause must be on the same terms as this Lease except:

28.2.1 the term of the new lease will be equal to the remainder of the Term as at the date that this Lease is to be surrendered by the Tenant; and

28.2.2 the Alternative Premises will be in a location selected by the Board taking into account any reasonable requirements of the Tenant.

28.3 Surrender of Lease and New Lease

The Tenant must:

28.3.1 execute and return the Deed to the Board within 30 days of receipt by the Tenant;

28.3.2 give notice within 30 days of receipt of the notice under clause 24.1 to the Board either accepting or rejecting the offer of a new lease of the Alternative Premises; and

28.3.3 where the Tenant accepts the new lease of the Alternative Premises, execute and return to the Board the new lease within 30 days of receipt of the new lease by the Tenant.

If the Tenant does not accept the offer of the new lease of the Alternative Premises, the Tenant must vacate the Premises in accordance with the terms of this Lease on the date
specified in the notice under clause 28.1, not being earlier than 6 months from the date of receipt of that notice by the Tenant.

28.4 No Compensation

28.4.1 Subject to clause 28.4.2, the Tenant:

(a) acknowledges that it is not entitled to receive any compensation from the Board where the Board requires the Tenant to surrender this Lease in accordance with this clause and, on and from the date of the surrender of this Lease (irrespective of whether the Deed is executed by the Tenant), the Tenant releases the Board from all further obligations under this Lease; and

(b) agrees that it must pay any costs incurred in connection with the relocation of the Tenant's Property.

28.4.2 Where the Retail Leases Act applies to this Lease, the Board must pay to the Tenant the reasonable cost of the Tenant relocating to the Alternative Premises within 14 days after the Tenant has completed its fitout of the Alternative Premises to the Board's satisfaction and complied with the Board's reasonable requirements. The amount payable to the Tenant is to be determined pursuant to the Retail Leases Act.

28.5 Relocation Period

If requested by the Tenant in the notice given by the Tenant to the Board pursuant to clause 27.3.2 the Board will provide that the new lease of the Alternative Premises will commence 30 days prior to the expiration of this Lease, during which time the Tenant may complete the relocation of the Tenant's Property, so long as the Tenant has complied with this clause.

29. Demolition

29.1 Notice to the Tenant

The Board may give a notice to the Tenant, which provides for the termination of the Lease on the grounds of a proposed demolition, on a date not being earlier than 6 months after receipt of the notice by the Tenant.

29.2 Surrender of Lease

The Tenant must execute and return to the Board a deed of surrender of this Lease within 14 days of receipt by the Tenant.

29.3 Compensation

29.3.1 Subject to clause 29.3.2, the Tenant acknowledges that it is not entitled to receive any compensation from the Board where the Board requires the Tenant to surrender this Lease in accordance with this clause and, on and from the date of surrender of this Lease (irrespective of whether the Deed is executed by the Tenant), the Tenant releases the Board from all further obligations under this Lease.

29.3.2 Where the Retail Leases Act applies to this Lease, the Board must pay to the Tenant the written-down value of the Tenant's fixtures and fittings in the Premises, such value to be certified by an independent accountant engaged by the Tenant. The compensation will be determined in accordance with the Retail Leases Act.
30. **Destruction or damage of Premises**

30.1 **Reduction in Rent**

If the Premises, or any part of the Premises is destroyed or damaged to the extent that the Tenant cannot use or have access to the Premises (except if the Tenant causes or contributes to the destruction or damage, or the Board's insurer is not legally required to reinstate the Premises because the Tenant caused or contributed to the destruction or damage) then the Board will reduce the Rent and other amounts due under this Lease by a reasonable amount depending upon the nature and extent of destruction or damage until the Tenant can use or have access to the Premises.

30.2 **Reinstatement of Premises**

If the Premises or any part of the Premises are destroyed or damaged, the Board may, within 3 months from the date of such damage or destruction, give notice to the Tenant:

30.2.1 terminating this Lease, where the Board considers that the damage or destruction is such that repairing it is impracticable or undesirable; or

30.2.2 that the Board will commence reinstatement of the Premises to a condition where the Tenant can use or have access to the Premises.

The Board does not have to reinstate the Premises.

30.3 **Tenant's right of termination**

Where the Tenant has not caused or contributed to the damage or destruction of the Premises and the payment of the insurance for the Premises is not refused due to the act or default of the Tenant, the Tenant may give written notice to the Board terminating this Lease where the Board does not:

30.3.1 give notice to the Tenant pursuant to clause 30.2; or

30.3.2 commence reinstatement within 12 months of the date of damage or destruction.

Upon termination of this Lease, each party is released from all further obligations under this Lease except nothing in this clause releases either party from any breach of this Lease arising prior to the date of termination.

30.4 **Dispute resolution**

If a dispute arises under this clause about the amount of the Rent or Outgoings or other amounts payable by the Tenant, either party may ask the President of the Australian Property Institute (Victorian Division) to nominate a valuer to determine the dispute as an expert. The parties will be bound by the determination of the valuer and will share the fees of the valuer equally.

30.5 **No compensation**

The Tenant acknowledges that if the Premises are destroyed or damaged, the Tenant is not entitled to receive any compensation from the Board, except this clause does not apply where the Retail Leases Act applies to this Lease.
31. Redevelopment Works by the Board in the Observatory Precinct

31.1 The Tenant acknowledges that the Board may carry out redevelopment works in the Observatory Precinct during the Term and/or during the Further Term and that such works may require the loss of some or all of the Car Parking Spaces and the Licence of the Rear Licensed Area and cause damage or interruption to the Tenant's business.

31.2 Neither the Board nor any of its contractors shall be liable to the Tenant in respect of any of the matters listed in sub clause 31.1 or in respect of any inconvenience or interruption or damage to its business or expense suffered or caused wholly or in part by such redevelopment works and the Tenant shall indemnify and hold the Board harmless in respect thereof.

32. Personal Property Securities Act

32.1 In this clause:

32.1.1 Landlord means the Board.

32.1.2 Landlord PPS Property means any item of property:

(a) in which the Board has an interest; and
(b) which is situated on the Premises at any time during the term of this Lease;

32.1.3 PPS Act means the Personal Property Securities Act 2009 (Cth);

32.1.4 Tenant PPS Property means any item of property:

(a) in which the Tenant has rights;
(b) which is situated on the Premises at any time during the term of this Lease; and
(c) of which, whether before or after the end of the term of this Lease:
   (i) the Landlord may require the Tenant to transfer ownership to the Landlord;
   (ii) the Tenant is obliged to transfer ownership to the Landlord,
   but does not include any Landlord PPS Property; and

32.1.5 words and expressions that are not defined in this Lease but which have a defined meaning in the PPS Act have the same meaning as in the PPS Act.

32.2 The Tenant:

32.2.1 charges its right title and interest in all Tenant PPS Property in favour of the Landlord, as security for the performance of the Tenant's obligations under this Lease, including but not limited to the Tenant's obligations to transfer ownership in the whole or any part of the Tenant PPS Property to the Landlord at the expiry or termination of the Lease;
32.2.2 acknowledges and agrees that the charge granted by the Tenant under clause 32.2.1 constitutes the grant of a Security Interest which the Landlord is entitled to register under the PPS Act;

32.2.3 acknowledges and agrees that the grant of this Lease also constitutes the grant of a Security Interest in the Landlord PPS Property in favour of the Landlord, which interest the Landlord is entitled to register under the PPS Act as a Purchase Money Security Interest; and

32.2.4 must do all things required by the Landlord from time to time (including, without limitation, signing any documents required by the Landlord) to enable the Landlord to register its above Security Interests under the PPS Act, and to otherwise perfect its Security Interest in the Tenant PPS Property and the Landlord PPS Property so that the Landlord's Security Interests have priority over any other Security Interests under the PPS Act in relation to the Tenant PPS Property and the Landlord PPS Property.

32.3 The Tenant:

32.3.1 warrants that it has not granted a Security Interest in respect of any Landlord PPS Property on or prior to execution of this Lease that has not been previously disclosed to the Landlord in writing; and

32.3.2 agrees that it will not grant a Security Interest in respect of any Landlord PPS Property or Tenant PPS Property in favour of any person other than the Landlord without the Landlord's prior written consent, which consent may be granted or withheld in the Landlord's absolute discretion and on any conditions that the Landlord considers necessary or desirable at its absolute discretion.

32.4 The Tenant must indemnify and hold harmless the Landlord against all claims, damages or loss incurred by the Landlord as a consequence of any breach by the Tenant of this clause.

32.5 The Tenant acknowledges and agrees that:

32.5.1 it waives its right under the PPS Act to receive a copy of any 'verification statement' or 'financing charge statement' (as those terms are defined in the PPS Act); and

32.5.2 on the expiration or earlier termination of this Lease, the Tenant must sign (and procure any holder of a registered Security Interest to sign) any document that the Landlord considers necessary or desirable under or as a result of the PPS Act to release any registered Security Interests under the PPS Act in relation to the Tenant PPS Property and the Landlord PPS Property.

32.6 If this Lease is terminated by the Landlord as a consequence of a default by the Tenant under this Lease, without limitation to any other rights of the Landlord, the Landlord may take possession of the Tenant PPS Property by way of set off for any loss or damage the Landlord is entitled to recover in connection with the Tenant's breach of the Lease.

32.7 This clause is an essential term of this Lease.

32.8 In the event of any inconsistency between this clause and any other provision of this Lease, the provisions of this clause will prevail and that other provision will be read down and interpreted accordingly.
33. **Guarantor**

33.1 **Liability of Guarantor**

In consideration of the Board granting this Lease to the Tenant at the Guarantor's request, the Guarantor:

33.1.1 guarantees that the Tenant will strictly observe and perform its obligations under this Lease including during any period of overholding or any Further Term;

33.1.2 must pay on demand to the Board money for any loss suffered by the Board due to the Tenant's breach of this Lease; and

33.1.3 indemnifies the Board against all loss suffered by the Board as a result of the Board having entered into this Lease including as a result of a breach of this Lease by the Tenant or this Lease being unenforceable against the Tenant.

33.2 **Extension of liability**

The Guarantor is liable even if:

33.2.1 the Board grants to the Tenant or a Guarantor any indulgence or extension of time;

33.2.2 this Lease is assigned, varied or ends for any reason whatsoever;

33.2.3 this Lease cannot be registered at the Land Titles Office;

33.2.4 any Guarantor does not sign this Lease; or

33.2.5 the Board decides not to sue the Tenant or any other Guarantor.

33.3 **Not enforce claim against Tenant**

The Guarantor must:

33.3.1 not seek to recover any money from the Tenant until the Board has been paid all moneys owing from the Tenant under this Lease;

33.3.2 not prove in the bankruptcy or winding up of the Tenant unless the Board has been paid all moneys owing to the Board by the Tenant under this Lease; and

33.3.3 pay to the Board any money which the Board has been unable to retain as a preferential payment received from the Tenant.

33.4 **Sale of Premises**

If the Board sells the Premises the Board may assign the benefit of the Guarantor's obligations.

33.5 **Alternate security**

33.5.1 If the Retail Leases Act applies to this Lease, the Board and the Tenant agree that if the Tenant wishes to provide a bank guarantee issued by an authorised deposit taking institution under the *Banking Act 1959* (Cth) in lieu of the guarantee pursuant to this clause, it will be reasonable for the Board to require the bank guarantee to be for an amount equal to the current year's Rent and the Tenant acknowledges that the payment of any bank guarantee pursuant to this clause is in addition to the provision of the Bank Guarantee.
33.5.2 The provision of the bank guarantee pursuant to this clause 33.5 will be governed by clause 13.

34. General

34.1 Notices

Any notice required to be served under this Lease must be in writing and must be served by post, facsimile transmission or hand delivered to:

34.1.1 the Tenant at its address set out in this Lease, the Tenant's registered office address, the Premises, or the last known address of the Tenant; and

34.1.2 the Board at its address set out in this Lease or any other address notified in writing to the Tenant by the Board.

34.2 Time of service

A notice or other communication is deemed served:

34.2.1 if served personally or left at the person's address, upon service;

34.2.2 if posted, 2 business days after posted;

34.2.3 if served by facsimile transmission, subject to the next sub-clause, at the time indicated on the transmission report produced by the sender's facsimile machine indicating that the facsimile was sent in its entirety to the addressee's facsimile machine; and

34.2.4 if received after 6.00 pm in the place of receipt or on a day which is not a business day, at 9.00 am on the next business day.

34.3 Entire understanding

This Lease and the disclosure statement (if any) contains the entire understanding between the parties as to the subject matter contained in it. All previous agreements, representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter are superseded by this Lease and have no effect.

34.4 Waiver

If the Board accepts the Rent or any other monies under this Lease (before or after the end of this Lease) or does not exercise or delays exercising any of the Board's rights under this Lease, it will not be a waiver of the breach of this Lease by the Tenant or of the Board's rights under this Lease.

34.5 Special Conditions

This Lease is subject to the Special Conditions. The Special Conditions override any inconsistent provisions in this Lease.
35. **Interpretation**

35.1 **Governing law and jurisdiction**

This Lease is governed by and is to be construed in accordance with the laws of Victoria. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria and waives any right to object to proceedings being brought in those courts.

35.2 **Persons**

In this Lease, a reference to a person includes a firm, partnership, association, corporation or other corporate body.

35.3 **Joint and several**

If a party consists of more than 1 person, this Lease binds them jointly and each of them severally.

35.4 **Legislation**

In this Lease, a reference to a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them.

35.5 **Clauses and headings**

In this Lease:

35.5.1 a reference to a clause, schedule or annexure is a reference to a clause, schedule or annexure in or to this Lease; and

35.5.2 headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this Lease.

35.6 **Severance**

In this Lease:

35.6.1 if a provision is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable; and

35.6.2 if it is not possible to read down a provision as required in this clause, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in this Lease.

35.7 **Number and gender**

In this Lease, a reference to:

35.7.1 the singular includes the plural and vice versa; and

35.7.2 a gender includes the other genders.

35.8 **No relationship**

No party to this Lease has the power to obligate or bind any other party. Nothing in this Lease will be construed or deemed to constitute a partnership, joint venture or employee,
employer or representative relationship between the Board and the Tenant. Nothing in this Lease will be deemed to authorise or empower the Tenant to act as agent for or with the Board.

35.9 **Exclusion of statutory provisions**

The following statutory provisions are excluded from this Lease:

35.9.1 Section 144 of the *Property Law Act 1958* (Vic); and

35.9.2 Division 7 of the *Transfer of Land Act 1958* (Vic).
Lease

This Lease is executed as a Deed on the day of

The Seal of the Royal Botanic Gardens Board, was affixed by authority of its Board in the presence of:

........................................ Board Member

........................................ Board Member

Executed by [the Tenant] in accordance with section 127(1) of the Corporations Act 2001:

........................................ Signature of Director

........................................ Signature of Director/Company Secretary

........................................ Print full name

........................................ Print full name

Signed sealed and delivered by [the Guarantor] in the presence of:

........................................ Witness

Signed sealed and delivered by [the Guarantor] in the presence of:

........................................ Witness
## Schedule 1

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Item 1</td>
<td><strong>The Board:</strong> (Clause 1) Royal Botanic Gardens Board established pursuant to section 6 of the Act.</td>
</tr>
<tr>
<td>Item 2</td>
<td><strong>Tenant:</strong> (Clause 1)</td>
</tr>
<tr>
<td>Item 3</td>
<td><strong>Guarantor:</strong> (Clauses 1 &amp; 31)</td>
</tr>
<tr>
<td>Item 4</td>
<td><strong>Land:</strong> (Clause 1) The area known as the Observatory Precinct and marked on the Plan at Annexure 5.</td>
</tr>
<tr>
<td>Item 5</td>
<td><strong>Premises:</strong> (Clause 1) The area currently known as Observatory Café and marked on the Plan at Annexure 2.</td>
</tr>
<tr>
<td>Item 6</td>
<td><strong>Commencement Date:</strong> (Clauses 1 &amp; 5.1) 11 March 2014</td>
</tr>
<tr>
<td>Item 7</td>
<td><strong>Expiry Date:</strong> (Clauses 1 &amp; 5.1) 30 June 2019</td>
</tr>
<tr>
<td>Item 8</td>
<td><strong>Term:</strong> (Clauses 1 &amp; 5.1) 5 years</td>
</tr>
<tr>
<td>Item 9</td>
<td><strong>Further Term(s):</strong> (Clauses 1 &amp; 5.2) 5 years</td>
</tr>
<tr>
<td>Item 10</td>
<td><strong>Last date for exercising the Option for the Further Term:</strong> (Clause 1) 31 March 2019</td>
</tr>
<tr>
<td>Item 11</td>
<td><strong>Rent:</strong> (Clauses 1 &amp; 6) $... per annum</td>
</tr>
<tr>
<td>Item 12</td>
<td><strong>Market Rent Review Dates:</strong> (Clauses 1 &amp; 7) The Commencement Date of the Further Term being 1 July 2019</td>
</tr>
<tr>
<td>Item 13</td>
<td><strong>CPI Adjustment Dates:</strong> (Clauses 1 &amp; 8) 1 July in the following years of the Term (2015, 2016, 2017 and 2018) and the Further Term (2020, 2021, 2022 and 2023)</td>
</tr>
<tr>
<td>Item 14</td>
<td><strong>Carparking Spaces:</strong> (Clauses 1 &amp; 2.3) Five (5)</td>
</tr>
<tr>
<td>Item 15</td>
<td><strong>Bank Guarantee:</strong> (Clauses 1 &amp; 13) An amount equal to one year's Rent.</td>
</tr>
<tr>
<td>Item 16</td>
<td><strong>Special Conditions:</strong> (Clauses 1 &amp; 34.5)</td>
</tr>
<tr>
<td>Item 17</td>
<td><strong>Marketing Contribution</strong> (Clauses 1 &amp; 6.2) Financial contribution of $2,000 per annum.</td>
</tr>
<tr>
<td>Item 18</td>
<td><strong>Conditions Precedent Date</strong> (Clauses 1 &amp; 2.6 ) 28 February 2014</td>
</tr>
<tr>
<td><strong>Item 19.</strong></td>
<td>Privileged Uses</td>
</tr>
<tr>
<td>--------------</td>
<td>----------------</td>
</tr>
<tr>
<td><strong>Item 20.</strong></td>
<td>Operating Hours</td>
</tr>
</tbody>
</table>
Schedule 2

1. Terms of the Licence of the Front Licensed Area
   - 5 years
   - no live or amplified music that would disrupt other programmed activities occurring in the Observatory Precinct
   - maintained in a clean, tidy and presentable state at all times and pavers cleaned regularly.

2. Terms of the Licence of the Rear Licensed Area
   - 3 years, renewable provided that the Board may terminate the licence at any time upon 90 days' notice to the Tenant if it proposes to carry out any development which reasonably requires access to or use of any part of the Rear Licensed Area.
## Schedule 3  Key Performance Indicators

### Legend:
- CPI = Consumer Price Index, as defined in the Lease
- FTE = Full time equivalent
- OH&S = Occupational Health and Safety
- RSA = Responsible Service of Alcohol
- RBGB = Royal Botanic Gardens Board

### Operational performance area

<table>
<thead>
<tr>
<th>Menu and presentation</th>
<th>Standard</th>
<th>Indicator</th>
<th>Measurement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fresh, quality, seasonal menu (food &amp; beverage) presented to contemporary standard</td>
<td>Customer perception of competitive menu range (retail, function)</td>
<td>Market research</td>
<td>&gt;85% customer satisfaction</td>
</tr>
<tr>
<td>Market competitive pricing</td>
<td>Menu quality consistent, fresh, flavoursome and seasonal</td>
<td>Customer and RBGB feedback forms</td>
<td>Differentiated food offer themed to outlet/property</td>
</tr>
<tr>
<td>Principles of environmental sustainability as outlined in the Environmental Stewardship Policy</td>
<td>Retail and function menus developed based on principles of environmental sustainability</td>
<td></td>
<td>New menu at least twice a year reflecting seasonal produce</td>
</tr>
<tr>
<td></td>
<td>Menu presentation in line with professional retailing standards and at least consistent with competitors</td>
<td></td>
<td>At least 30% of retail menus sourced locally</td>
</tr>
</tbody>
</table>

### Outlet Presentation and Management

<p>| Maintain public and back of house areas in a clean and well organised state at all times | Maintain: | &gt;95% compliance RBGB inspection | Inspections and feedback via monthly meetings |
| Adherence to contracted operating hours | Defined catering areas in a clean, orderly and compliant state at all times | Function area cleaned promptly | Food safety audits from time to time |
| | Equipment in a clean and functioning state | | |</p>
<table>
<thead>
<tr>
<th>Operational performance area</th>
<th>Standard</th>
<th>Indicator</th>
<th>Measurement</th>
</tr>
</thead>
</table>
| Staff Management and Presentation            | - Professionally presented and trained staff                                                                                                                                                               | - Staff professionally presented in clean, well maintained uniform  
- Professional standards of customer interaction and staff presentation  
- Achieve consistent standards in relation to:  
  o staff recruited and trained to role/station  
  o staff ratio to minimise queues  
  o low staff attrition  
- Active skill based training program including customer service staff training /mentoring  
- Customer surveys  
- Market research from time to time |                                                                                                                                                                                                            |
| Quality service provision                    | - Responsive and proactive service of equivalent or higher standards than:  
  o stated in Lease  
  o comparable contemporary café operations                                                                                                                                                     | - Efficient queue management  
- Responsive complaints management/Complaint resolution within 24 hours  
- Professional standards of interaction and presentation of all sales and service staff  
- Customer satisfaction levels >80%  
- Monthly reporting  
- Customer surveys  
- Market research from time to time |                                                                                                                                                                                                            |
| Compliance and Risk Management               | Compliance with regulatory and contract requirements:  
- Compliance with legislative requirements including Food Safety, OHS and RSA                                                                                                                                 | - Compliance with legislative and RBGB requirements  
- Development and implementation of:  
  o an OHS manual,  
  o A Risk Assessment  
  o Safe Work Methods Statements (or JSAs)  
- All contractors commissioned by the Operator provide the following documentation prior to entry into the Gardens and commencing work:  
  - Incident reports completed within 24 hours  
  - Rectification of issues within 4 hours  
  - Copy of OHS documents provided to RBG as requested from time to time within 24 Hours of request |                                                                                                                                                                                                            |
### Operational performance area

<table>
<thead>
<tr>
<th>Standard</th>
<th>Indicator</th>
<th>Measurement</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>o an OHS manual, o A Risk Assessment o Safe Work Methods Statements (or JSAs) o Certificate of Currency • Compliance with internal food safety/area compliance audits • Regular participation in the RBGB’s emergency management processes including warden training • Food premises registration is kept current • Conditions of Liquor Licence are not contravened • Compliance with council audits</td>
<td>• Area management to required standard • Lodgement of orders with RBGB within 5 days of receiving order</td>
</tr>
</tbody>
</table>

### Environmental Sustainability

- Conduct business practices including procurement and waste management to reflect the highest standards of environmental sustainability practice
- Proactive development and implementation of environmental sustainability initiatives in purchasing, menu design, packaging, customer communication strategies and management of the Lease
- Proactive customer awareness to achieve progressive reduction in general waste
- Proactive customer awareness of RBGB environmental messages
- Implementation of Environmental Management System
- Increased green procurement

### Financial Performance

- Provide industry competitive return to RBGB
- Maintain growth at least consistent with CPI annually
- Provide industry competitive return to RBGB
- Maintain growth at least consistent with CPI annually
- Achieve forecast budget for total sales, sales x outlet and spend per head
- Growth at least at pace with CPI
- Financial report/return to RBGB
- Financial report vs. budget

### Reporting

- Attendance at monthly contract meetings
- Provision of timely written reports regarding gross receipts
- Reporting as stated in the Lease
- Reporting as stated in the Lease
- Regular attendance at monthly, quarterly, annual meetings
Annexure 2

Disclosure Statement
Annexure 4

Plan of Observatory Precinct