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Incorporating:

Clements Hutchins & Co.

Peter Boyle & Associates

Perillo Adami & Frank

Victor Borg & Co.

23 Lobelia Drive

Altona North VIC 3025

P.O Box 97 Altona 3018

T: 9398 2377

T: 9399 9922

reception@locallawyers.com.au

www.locallawyers.com.au

RETAIL LEASE

Tenant Information Pack

*A lease is an important and complicated legal document. It creates a binding and enforceable legal relationship between a landlord and a tenant that takes effect for the duration of the lease. This legal relationship creates rights, responsibilities and obligations for both a landlord and a tenant. The following information is designed to provide a summary of the **key rights, responsibilities and obligations** of a tenant of a retail premises under the various standard forms of lease. This information is not a substitute for reading the lease and is intended only to provide an overview.*

All references in this information pack to “you” are to be interpreted as a reference to “the tenant”.

Application of the Retail Leases Act 2003

The Act applies, with some limited exceptions, to the premises used for the supply of goods or services to the public. This includes shops in shopping centres, but also includes stand alone premises to which the general public has access. It also includes premises that the tenant makes available for use by other businesses, such as convention centres and storage facilities.

INTRODUCTION

As the tenant of a retail premises, the *Retail Leases Act* (**'the Act'**) provides you with various protections in relation to the landlord and the property. This Information Pack is designed to give you an overview of these protections and your obligations as a tenant.

DISCLOSURE STATEMENT

You are entitled to receive a Disclosure Statement in relation to the premises at least 7 days before you enter into a lease. Failure by the landlord to provide a Disclosure Statement may entitle you to give a notice to terminate the lease within 90 days of entering into the lease.

LEGAL COSTS

The Act prohibits the landlord from recovering the landlord's legal costs on preparation of the lease and Disclosure Statement from you. However you will be responsible for the payment of your own legal costs. We can give you an accurate estimate of our costs in acting for you when we know the basic terms of the lease.

MINIMUM TERM

A retail tenant is entitled to a minimum term of 5 years. This can be by way of a term for 5 years or a term and options that total 5 years. The tenant can seek consent from the Small Business Commissioner to enter into a lease of less than 5 years.

A lease for less than 12 months is **not** a retail lease, however where a tenant initially enters into a lease for less than 12 months then over

holds beyond the 12 month threshold, the lease becomes a retail lease.

BUILDING OUTGOINGS

Building outgoing include any of the following expenses incurred in respect of the land, building or premises. Any or all of these outgoing may be applicable to your lease and payable by you:

- Rates and levies imposed by relevant authorities (for example local council rates);
- Premiums and charges for insurance policies taken out by the landlord; and
- Owners Corporation fees.

These are the primary outgoing which you may be liable to pay under the lease. The lease may also include additional outgoing which you must also pay. All expenses must be set out in the Disclosure statement.

The one expense that the law prevents the landlord passing on to you is Land Tax.

TENANT'S PAYMENT, USE AND INSURANCE OBLIGATIONS UNDER STANDARD LEASES

You must:

- pay the rent required under the lease without any deductions to the landlord in accordance with the terms of the lease;
- pay all charges for the provision of services to the premises, such as water, electricity, water and telephone;
- remove from the premises all rubbish and waste generated by your operations;
- conduct the business operations in an efficient, safe and lawful manner and comply with the requirements of all relevant authorities; and

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- take out and keep current insurance cover in your name for public liability.

You must **not**:

- use the premises except for the permitted use;
 - use the premises for any illegal purpose;
 - carry on any harmful activity on the premises;
 - carry on any activity that might cause nuisance, damage or disturbance to anyone on a neighbouring property;
 - do anything which might adversely affect any insurance policy relating to the premises;
 - place a sign on the outside of the premises without the landlord's written consent; or
 - make any alteration or addition to the premises without the landlord's written consent.
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REPAIRS, MAINTENANCE, FIRE PREVENTION AND REQUIREMENTS OF AUTHORITIES

Standard leases provides that you must:

- keep the premises in the same condition that it was in at the **start** of the lease, except for fair wear and tear. However Section 52 of the Act imposes a statutory obligation on the landlord to maintain the premises in the same condition as they were at the start of the lease. There is an obvious tension between these two obligations and each case generally falls to be resolved by negotiation. The *Building Act* also makes the landlord responsible for maintenance of essential services, such as safety and air conditioning, and the landlord cannot

pass on these costs to you.

Subject to Section 52, standard leases require the tenant to:

- comply with all notices and orders affecting the premises which are issued during the term;
- repaint all painted surfaces (and refinish all finished surfaces) in a workmanlike manner at least once every 5 years during the lease;
- replace broken glass and repair defective windows, doors, locks etc;
- give notice to the landlord of any damage or defects to the premises; and
- keep all doors and windows locked when the premises are not in use.

You are **not** obliged:

- to repair damage to the premises which the landlord must insure against; or
 - carry out structural or capital repairs to the premises unless such actions are necessary as a result of the your conduct.
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LEASE TRANSFERS AND SUBLETTING

You must **not transfer** the lease or **sublet** the **premises** without the landlord's written consent. The landlord must not unreasonably withhold their consent, and may only withhold their consent in accordance with the Act.

You must pay the landlord's reasonable expenses incurred in connection with an application for the landlord's consent (such as their legal costs).

GENERAL AGREEMENTS BETWEEN LANDLORD AND TENANT

By entering into a lease, you and the landlord agree to a number of general conditions from the outset of the lease.

You agree that you use and occupy the premises at your own risk and indemnify the landlord against all claims resulting from accidents occurring on the premises.

When the lease term ends, you must return the premises to the landlord in a clean condition (subject to fair wear and tear) and you must remove all of your installations and other property on the premises.

If you leave any of your installations or other property on the premises after the lease ends, then that property may be considered abandoned by you and will become the property of the landlord. If the landlord chooses to remove your property then the landlord may then seek to recover the costs of removal from you.

You need to make your own enquiries about any planning permits required to use the premises for your intended use. The landlord has no responsibility for this.

LANDLORD'S OBLIGATIONS

The landlord must give you quiet possession of the premises without any interruption by the landlord as long as you fulfill your obligations under the lease.

The landlord must keep the structure (including the external walls and roof) of the building and the landlord's installations in a condition consistent with their condition at the start of the lease.

EVENTS OF DEFAULT AND LANDLORD'S RIGHTS

If you default under the lease this gives the landlord certain rights.

The landlord may terminate the lease if:

- the rent is unpaid for 14 days after it is due;
- you do not meet your other obligations under the lease;
- you or a guarantor becomes bankrupt; or
- you discontinue your business on the premises or leave the premises unoccupied for 14 days without the consent of the landlord.

If the landlord terminates the lease, then the lease ends, but you may still be sued by the landlord for unpaid rent or for damages for breaches of your obligations under the lease. Before terminating the lease, the landlord must give you a notice under the *Property Law Act*.

DESTRUCTION OR DAMAGE

If the premises is damaged so that it cannot be used or accessed for the permitted use, a fair proportion of the rent and outgoings is to be suspended until the premises is again wholly fit for the permitted use.

If the premises is partly destroyed, but not substantially destroyed, the landlord must reinstate the premises as soon as reasonably practicable. If the premises is wholly or substantially destroyed the landlord is not obliged to reinstate the premises or the building and you and the landlord may end the lease.

However, if you are responsible for the destruction of the premises then you do not have the right to suspend payment of the rent or to terminate the lease.

CONSENTS AND WARRANTIES BY LANDLORD AND TENANT

The landlord must not unreasonably withhold its consent or approval to any act by you which needs consent, unless the lease otherwise provides. However, the landlord may impose reasonable conditions on any consent or approval and you must reimburse the landlord's reasonable expenses resulting from an application for its consent or approval, such as the landlord's legal costs.

The lease and the disclosure statement contain the whole agreement of the parties, and neither party is entitled to rely on any statement which is not contained in the lease or disclosure statement.

OVERHOLDING AND ABANDONMENT OF THE PREMISES

If you remain in possession of the premises without objection by the landlord after the end of the term of the lease, then you, without any need for written notice of any kind, are a monthly tenant on the conditions of the lease. This is known as overholding.

Either party may end the tenancy by giving one month's written notice to the other, and the landlord may increase the monthly rent by giving you one month's written notice.

RENT REVIEWS TO MARKET

If a market rent review is applicable to the lease, then you may initiate a rent review by giving the landlord a written notice stating the current market rent which you propose as the rent for the review period. The landlord may do likewise to you.

FURTHER TERMS

If the parties cannot agree on what the rent is to be for the review period, the parties must appoint a valuer to determine the current market rent. The valuer must make a decision on the rent and that decision is binding on both parties. The fees of the valuer are paid equally by the parties.

You have an option to renew the lease for the further terms stated in the lease, and the landlord must renew the lease for each further term provided that there is no unremedied breach of the lease.

The landlord must notify you of the last day by which the option is to be exercised at least six, but not more than twelve, months prior to the last day for exercise of the option.

The renewed lease starts on the date after the previous lease term ends.

SECURITY DEPOSIT

You must pay a security deposit to the landlord which is set out in the lease.

If the security deposit is invested in an interest bearing account then all interest is treated as a supplementary payment of security deposit. The landlord must use the security deposit to make good the cost of remedying breaches of your obligations under the lease.

After the lease has ended and you have vacated the premises and performed all of your obligations under the lease, the landlord must refund the unused part of the security deposit to you.

OBLIGATIONS OF GUARANTORS UNDER GUARANTEE & INDEMNITY

The guarantor guarantees that you will perform all your obligations under the lease for the term and any renewed terms.

The guarantor must pay the landlord any amount which the landlord is entitled to recover from you under the lease and indemnifies the landlord against all loss resulting from the landlord having entered into this lease.

If there is more than one guarantor then the guarantee binds them separately, together and in combination.

GST

All money which is payable under the lease is GST **exclusive**, unless otherwise stated.

IF THE PREMISES IS ONLY PART OF THE LETTABLE AREA OF THE BUILDING

This section is only relevant if the rented premises constitute only a part of the lettable area of the building, such as a shop in a shopping centre.

In this case, the landlord reserves the use of all external surfaces of the building, such as walls, and areas outside the building.

The building, common areas and the landlord's installations remain under the landlord's absolute control. Some of the landlord's main rights include:

- to close off the common areas and its installations as often as it consider appropriate;
- to exclude people whose presence it considers undesirable;
- to grant easements over any parts of the land which do not adversely affect your use of the premises; and
- to repair or renovate the building but, in doing so, it must not cause unreasonable inconvenience to you.

Further, you must not obstruct the common areas and you must also comply with the building rules.

ADDITIONAL PROVISIONS

You and the landlord may agree to additional provisions that do not form part of the standard lease, for example, a rent free period or a requirement that you undertake certain works at the premises. Any such additional provisions bind both you and the landlord and if they are inconsistent with any other provisions of the lease, then the additional provisions override them.

**LANDLORD'S LIQUIDATION OR
BANKRUPTCY**

Recent cases have held that a Liquidator of a corporate landlord may disclaim a lease. This means that the Liquidator can immediately end a lease without compensation to the tenant. The same most probably applies to an individual landlord who is made bankrupt.

LEGAL COSTS – STANDARD TRANSACTION

Our Professional Fees (current 1 April 2017)

Annual Rent	Legal Costs
Less than \$25,000	\$660 (inc. GST) plus disbursements
\$25,000 to \$50,000	\$770 (inc. GST) plus disbursements
\$50,000 to \$100,000	\$880 (inc. GST) plus disbursements
Over \$100,000	\$990 (inc. GST) plus disbursements

Legal costs may increase if the file involves substantial negotiation in relation to the terms of the lease or other complicating factors.



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