

MEMORANDUM – COMMON MALL TERMS AND CONDITIONS

Dated: 1 September 2016

This Memorandum contains the terms and conditions of the casual licence agreement.

1. Definitions and interpretation

we, us, our	Means the person described in item 1 . Where relevant, it includes our General Manager , employee, or any person we authorise
You, your	Means the person described in item 2 , and where relevant, includes your employee, agent, or any person you allow on the licenced area or in the centre .
Centre	Means the retail shopping and commercial centre described in item 3 , and includes the licenced area , common area, buildings, structures, and property we own or control.
Item	Means an item in the reference table.
Permitted use	Means the use described in item 4 .
Licenced area	Means that part of the centre described in the Booking Schedule and includes our property within it,
Your property	Means your property inside the licenced area and includes your fixtures, fittings, signs, equipment and goods,
Booking Schedule	Means the document supplied by the licensor outlining the casual licence booking details including licenced area, rate and booking dates.

2. The Licence

We grant to you and you take a non-exclusive **licence** to use the **licenced area** strictly for the **permitted use** for the **licence period** on the conditions set out in this **licence** and during such trading hours as we direct from time to time.

3. What you must pay us

- (a) You must pay us the **licence** fee as indicated in the booking schedule. If you are a weekly tenant, then you must pay us the total **licence** fee, if requested, for the term in advance at least seven (7) days prior to the commencement of the **licence**. If you are a monthly tenant, then you must pay either the total monthly licence fee at least seven (7) days prior to the booking start date or weekly instalments in advance of each week of the booking period.
- (b) If you are late in paying us any money we may charge daily interest on it at a rate equal to the Westpac Indicator Lending Rate on the day it was due (or equivalent rate).
- (c) Despite any other provision of this **licence**, if a goods and services tax or similar value added tax ("GST") is imposed on any supply made under or in accordance with this **licence**, the amount you must pay for that supply is increased by the amount of that GST.
- (d) Where any money we charge you is calculated using a time period, and the **licence** commences or expires during that time period, we must make any necessary proportional adjustment at a daily rate in accordance with the following formula: $\text{Daily rate} = (\$X \text{ P.A./12}) / \text{no of days in the month}$.
- (e) If either you or we prove an error in any money charged, we must correct it and make any necessary adjustment in your next statement (or as soon as possible if the **licence** has expired).
- (f) Rent paid is non-refundable. Extreme weather conditions affecting a booking will be considered and resolved on a case by case basis by the Landlord.
- (g) If you cancel the booking within 7 days prior to the start date, you must pay us a cancellation fee of 10% of the booking fee. This will be deducted from the booking fee paid by you at the time of making the booking.

4. You must obey the law

You must obey any law that requires you to do anything concerning the **licenced area** or this **licence**.

5. When the licence ends

- (a) you must vacate the **licenced area** and give it back to us in the same condition as determined by us as it was at the date you took possession of the **licenced area**; and
- (b) you must make sure all **your property including rubbish** is removed

6. Maintaining the licenced area and your property

You must keep the **licenced area** clean and tidy and in good and substantial repair, order and condition including carrying out any repairs and fixing any damage you cause. You must not alter the **licenced area** in any way without our prior consent. You must not do anything that is or may be dangerous, annoying or offensive or that may interfere with other occupiers or people in the **centre**. You must not obstruct the view (sight lines) of any other premises in the **centre**. You must conduct your business in a professional manner with quality goods, displays and service in keeping with the standards of the **centre**.

7. You must have insurance

You must have current public liability insurance for a minimum of \$20,000,000 for the **licenced area** (specifically noting the situation/location as Harbour Town Shopping Centre, Anywhere in Australia or World Wide) and the risks and indemnities in this **licence**. The public liability certificate provided must be in the same name as the client indicated on the licence agreement. You must provide us with evidence of the current insurance certificate upon our request. You must not do anything that may make our insurance invalid or able to be cancelled, or that may increase our insurance premium.

8. You indemnify us

You occupy and use the **licenced area** at your own risk. You indemnify us against any action, demand, cost, liability or loss due to any damage, loss, injury or death, caused or contributed to by:

- (a) Your act, omission or negligence; or
- (b) Your use and occupation of the **licenced area** or the **centre** except to the extent that we caused this by a wrongful act or negligence.

9. Signs

You must get our consent before you put any signs or advertisements in the **licenced area**.

10. How you breach the licence

You breach the **licence** if you disobey any term of the licence including (without limitation):

- (a) If you do not pay us on time any part of the **licence fee**; or
- (b) If you use the **licenced area** for any purpose except for the **permitted use**.

11. If you breach the licence

If you breach the **licence**, we must give you a notice requiring you to remedy the breach. If:

- (a) You breach the **licence** and do not remedy it as required; or
- (b) An order is made or resolution is passed to wind you up; or
- (c) An administrator or receiver is appointed to you; or
- (d) Any act or event mentioned in section 461 (1) (a) to (k) of the Corporations Act 2001 occurs in relation to you; then we may do any one or more of the following:
 - a. Re-enter and take possession of the **licenced area**;
 - b. End the **licence**;
 - c. Recover from you any loss we suffer due to your breach;
 - d. Remedy the breach at your cost and enter and remain on the **licenced area** for this purpose; or
 - e. Exercise any of our other legal rights.

12. Serving notices

We may serve a notice on you by:

- (a) Giving it to you personally; or
- (b) Leaving it at the **licenced area**; or
- (c) Leaving it at or posting it to you, or faxing it to your registered office or your business address as last known to us.

13. No representations

You agree that (other than as expressly contained in this **licence**), no promise, representation, undertaking or warranty given by us or on our behalf has been relied on by you in entering into this **licence** or has in any material way induced you to enter into this licence. You must disclose to us in writing before you execute this **licence** any promise that you have relied on in entering into this licence which in any material way induced you to enter into this **licence**.

14. No transfer, mortgage or sub-licence

You must not mortgage, charge, transfer, grant any sub-**licence** or part with or share possession of the **licenced area** or your rights under this **licence**.

15. Limited Liability

- (a) We are acting as trustee of a trust. We enter into this licence only in our capacity as trustee of the trust described in item 1 (the "Trust") and in no other capacity. A liability arising under or in connection with this licence is limited to and can be enforced against us only to the extent to which it can be satisfied out of property of the Trust out of which our liability applies despite any other provisions of this licence and extends to all our liabilities and obligations in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this licence.
- (b) The parties, other than us, may not sue us in any capacity other than as trustee of the Trust, including seeking the appointment of a receiver (except in relation to property of the Trust), a liquidator, an administrator or any similar person to us or prove in any liquidation, administration or arrangement of or affecting us (except in relation to property of the Trust).
- (c) The provisions of this clause shall not apply to any of our obligation or liability to the extent that it is not satisfied because under the constitution establishing the Trust of by operation of law there is a reduction in the extent of our indemnification out of the assets of the Trust, as a result of our fraud, negligence or breach of trust.

16. Centre Rules

The centre rules and mall merchandising guidelines (copy attached to the Licence Agreement) including any eatery and food hall rules are part of the **licence** and you must obey them. We may change the rules as we think is necessary or desirable, but any change must be for the good management of the **centre**.

17. Relocation

You agree and acknowledge that we can require your business to be relocated to another licenced area in the **centre** if we give you seven (7) days' notice containing details of an alternative area for you, and offering you a new **licence** of that area on such terms and conditions as we decide. Once you have received our relocation notice, you can either terminate this **licence** or accept the relocation. If you accept the relocation you must execute a **licence** of the alternative area. You are not entitled to any compensation or rebate of the **licence** fee if we exercise our rights under this clause.

18. No works

You must not carry out any works within or about the **licenced area** without our prior written approval.

19. Termination

Notwithstanding any clause in this **licence** we have the right to give seven (7) days' notice to terminate this licence. If this **licence** is terminated under this clause you will be entitled to a pro-rata rebate of the licence fee arising out of the termination, but no compensation.

20. We may enter

We may enter the **licenced area** for inspection or to carry our maintenance, repairs or building work at any reasonable time and with reasonable notice. If there is an emergency we can enter at any time without giving you notice.

21. Sale of Centre

If we sell, transfer or assign all or part of the **centre** or if we cease to manage the **centre**, you must, if required by us, execute an agreement in substantially the same form and on the same commercial terms as this agreement with the new transferee, assignee and/or manager.

22. The Licencee must not:

- a) hinder the quiet enjoyment of tenants at the Centre;
- b) hinder the general clear view of any tenant's shopfront;
- c) promote other shopping centres or retailers not in the centre;
- d) use 'A' frame stands in the licence area;
- e) use the centre posts, gardens or any other equipment owned or controlled by the Licensor;
- f) dismantle or remove any part of the display before the end of the designated centre trading hours without the Licensors prior approval
- g) permit more than two (2) persons to occupy the Licence Area to staff the display at any one time, unless otherwise approved by the Licensor
- h) disclose the terms of any agreement or any of the negotiations relating to the terms of the agreement to a third party without the Licensors consent unless for the Licencee own financial, accounting or tax records or where compelled to by law;
- i) operate their business outside of the confines of the casual licence area as specified in the casual licence agreement;
- j) directly approach Harbour Town customers. All staff must remain within the casual licence area as indicated in the Booking Confirmation.

23. Centre Equipment

Where available, a sales cart may be provided free of charge as part of the Licence Agreement for the duration of the booking. Stock **MUST** be contained within the cart and **MUST NOT** be hung from the cart shutters

24. Staff

Smoking, eating and drinking is prohibited in the casual licence area to which this agreement applies.

All staff must remain within the casual licence area as indicated in the Booking Confirmation.

The licensee must ensure that staff are appropriately trained and suitably qualified to conduct the licensee's business.

25. Products

The Product being promoted must be approved by Centre Management prior to the booking commencement and we have the right to veto any products sold.

26. Trading Hours

You must trade at all times during designated trading hours of the Centre, which are as follows:

- | | |
|----------------------------|----------------|
| a. Monday - Wednesday | 9:00am-5:30pm |
| b. Thursday | 9:00am-7:00pm |
| c. Friday - Saturday | 9:00am-5:30pm |
| d. Sunday & public holiday | 10:00am-5:00pm |

Failure to operate during the centres core trading hours will result in a termination of the licence agreement.

27. Set Up and Pack Down

Set up and pull down must be facilitated outside the Centre's designated trading hours. If any variation to the set up times is required Centre Management must be notified 24 hours prior to commencement. If not, Centre Management reserves the right to terminate the Licence.

Any contractors entering the centre to install or dismantle casual leasing equipment must sign in with centre security on arrival and be inducted before commencing any works. Contractors must also supply a copy of their current public liability insurance before undertaking any installation works in centre.

28. Presentation and Displays

Careful planning, high standards of presentation and service, the correct mix of stores and effective marketing are essential elements, to the success of the Harbour Town Gold Coast. To this end, we welcome organisations that share our philosophy and maintain a totally professional approach to their activities and initiatives.

Presentation guidelines include but are not limited to:

- a) The area and display must be kept tidy and clean at all times throughout the duration of the casual licence;
- b) Upon completion of the display, the area must be left clean and in a tidy condition;
- c) All material required for set up of your displays are your responsibility e.g. Extension cords, Velcro tape etc;
- d) The physical appearance should be in a professional manner producing a quality image enhancing both the product and Centre;
- e) If supplying your own equipment this must be first approved by Centre Management;
- f) Trestle tables are permitted but must be covered in full length fitted table cloths in black or navy;
- g) If supplying branded table cloths these must first be approved by Centre Management;
- h) All tickets and signs must be professionally written, no hand written tickets/signs will be accepted;
- i) The Licensee shall not in any way obstruct the free movement of customers in walkways, entrances, shopfronts, service corridors or fire exits;
- j) Displays are to be no higher than 1.5 metres, unless otherwise approved;
- k) Any pull up banners or approved free standing signage must be double sided;
- l) Upon request, images of the proposed display and/or product intended for sale may be requested and should be provided by the licensee;
- m) When utilising your own equipment it is your responsibility for the safe storage of such equipment outside of trading hours. The centre may be able to assist with temporary storage however this is at your own risk;
- n) When utilising the centre mall carts you must ensure that all stock is contained/displayed within the mall cart. No additional stock or equipment is permitted outside of the cart unless otherwise approved by Centre Management;
- o) Any display not meeting the centre standards may result in you being requested to cease trade until these issues can be resolved.

29. Casual Lease Fees

As outlined in the Booking Schedule supplied by Centre Management prior to your booking commencement date.

30. Payment Options

- Cheque payments are to be made to Savills (QLD) Pty Ltd Trust No 56. Payment must be submitted five working days before commencement of trade.
- Cash
- Direct Deposit
 - Bank: Macquarie
 - A/C Name: Savills (QLD) Pty Ltd Trust No 56
 - BSB: 184 446
 - A/C Number: 274512367
- Please send payment confirmation to admin@harbourtownshopping.com.au and michelle@harbourtownshopping.com.au or fax 07 5529 2459

CENTRE RULES

- 1 No rubbish or waste may at any time be placed in common area bins. All rubbish/boxes etc. must be taken to one of the bins located in the loading dock.
- 2 Tenants and their employees must not place any receptacles containing rubbish or waste or any other containers or receptacles upon any part of the entrance to any premises or any part of the Common Areas.
- 3 Tenants and their employees must comply with the directions of the Landlord as to the place to which receptacles are to be taken, delivered or stored and as to the time and the manner in which this is to be done and any other directions of the Landlord in regard to the removal or disposal of any rubbish or waste.
- 4 Any plant or equipment provided by the Landlord for operation in the Centre and used by Tenants or their employees for any purpose must only be used by Tenants and their employees in accordance with the manufacturer's supplier's or the Landlord's instructions relating to use and in the case of removable plant and equipment the same must be returned promptly after use to the place provided for its safe keeping.
- 5 All defects in or damage to plant and equipment must be reported to the Landlord by the person using same immediately the defect or damage is occasioned or becomes apparent.
- 6 Vehicles or other means of transport must not be driven or ridden on any pedestrian way, recreation garden or storage area or service corridor within the Centre or any other part of Common Areas except during the times from time to time designated by the Landlord.
- 7 Service and fire corridors in the Centre must not be used for the storage of rubbish, waste, cartons, boxes, cases, bags or any articles of whatever kind and the same may be removed by the Landlord without notice in the event of breach of this rule at the Tenant's expense.
- 8 Tenants must not give or imply permission to members of any organisation to hold any function or to solicit any donations within the Centre without first obtaining the written approval of the Landlord.
- 9 Tenants must use or permit to be used for the receipt, delivery or movement of any goods wares or merchandise or articles of bulk or quantity only those parts of their premises or the Common Areas designated for goods delivery and only during those times the Landlord from time to time directs and must not without first obtaining the consent of the Landlord use any elevators or walkways for the movement of goods not designated for goods delivery.
- 10 All those parts of the Centre other than any premises not the subject of any other lease by the Landlord must be under the absolute control of the Landlord and Tenants and their employees must not place any obstruct or permit the obstruction of those parts of the Centre or any of them.
- 11 Tenants and their employees must not throw or permit to be thrown, dropped or to fall any article or substance whatsoever from or out of any premises and the Common Areas or any part thereof and must not place upon any sill, ledge or other like part of any premises or the Common Areas any article or substance.
- 12 Tenants and their employees must not use the Common Areas or any part thereof for any business or commercial purpose for the display or advertisement of any goods or services except with the consent in writing of the Landlord and in accordance with any conditions imposed by the Landlord.
- 13 The Tenant, the Tenant's employees and agents MUST NOT smoke cigarettes, pipes, cigars or any other form of tobacco or similar substance while manning the site and the Tenant must comply with the reasonable directions from time to time of the Landlord in this regard.
- 14 The Common Areas and services therein must not be used for any purposes other than for which they were designed and in using the Common Areas Tenants and their employees must not cause any inconvenience or delay than is reasonably necessary to other Tenants of the Centre waiting to use the same.
- 15 A Tenant must not erect advertising or promotional material in support of external organisations without the express approval of the Landlord which approval must be at the absolute discretion of the Landlord.
- 16 Qld Fire Service Inspectors regularly visit the Centre to ensure all fire corridors, fire doors etc are kept clear and operational at all times. They impose 'on the spot' \$1,000 fines on the retailer responsible for leaving items in these areas or chocking open fire doors. This applies to all manner of stock, crates, trolleys etc.

Tenants must ensure all deliveries through these corridors are kept moving, never stationary, and the fire doors are never chocked or door closers disconnected.

- 17 The Landlord or its nominated agent must have the sole right to evict those members of the public who it deems to be acting in a manner which is:
- (a) Undesirable;
 - (b) Unlawful;
 - (c) Or detrimental to or interfering with the preservation of good order or the comfort, safety and pleasurable enjoyment of persons lawfully using the Centre.

FURTHER INFORMATION

Should you require any further information or have any queries about the Casual Licence Terms and Conditions, please contact:

Harbour Town Centre Management on (07) 5529 1734.