

7 April 2020

Our ref PTN:7107
Your ref

Deed of variation of lease

Below is a template deed of variation of lease, made available to help Victorian landlords and tenants in the COVID-19 situation. We are not giving you legal advice by making this template available to you.

This document is intended to help you record any agreed variation of your lease in a legally binding way – and includes guarantors in the deal.

You should make sure that any changes you record are accurate, precise and clear.

When drafting the variation bear in mind that the COVID-19 situation might last longer than expected, or it might resolve more quickly than expected.

This deed is intended for use within Victoria. Other states have different requirements – if you need help in relation to a lease outside Victoria please contact us.

If you want or need help writing your variation, or if you need us to check your draft, or if your situation is complicated, email us a copy of your lease and a copy of your draft deed of variation. We will then contact you with a quote (which will be reasonable and fixed fee) before we proceed.

If you have any questions feel free to give Yen Ong, Paul Nunan or Simon Nunan a call on 03 9006 5800.

Yours faithfully,



Eastern Bridge
info@easternbridge.com.au

Deed of Variation of Lease

This document has been prepared for the assistance of landlords and tenants in the circumstances of COVID-19.

CAUTION: This document is legally binding once signed.

Deed of Variation of Lease (Victoria)

Parties

The landlord(s) described in Item 2 of the schedule ("**Landlord**")

and

The tenant(s) described in Item 3 of the schedule ("**Tenant**")

and

The guarantor(s) described in Item 4 of the Schedule ("**Guarantor**")

Schedule

Item 1 Date of this document

Date:.....

The date that this document has been signed by all the parties to it (the date that the last person signs).

Item 2 Landlord(s)

Name:.....

The name of the current owner of the property. If the freehold has changed hands since the lease was signed, the name of the new owner should be used here.

ACN (if applicable):.....

Address:

.....

Name:.....

ACN (if applicable):.....

Address:

.....

Item 3 Tenant(s)

Name:

ACN (if applicable):.....

Address:

.....

Name:

ACN (if applicable):.....

Address:

.....

Item 4 Guarantor(s)

Name:

ACN (if applicable):.....

Address:

.....

Name:

ACN (if applicable):.....

Address:

.....

Item 5 Premises

Address or other description of premises:

.....

Item 6 Lease

*Attach a copy of this
documentation at Annexure A*

Date the lease was signed (attach a copy):.....

First commencement date:.....

(If an option to extend the lease has been exercised) When did the
current option period start?

.....

Period of lease:

Dates and descriptions of any prior transfers of lease (attach a copy):

.....

.....

.....

Dates and descriptions of any prior variations of lease (attach a copy):

.....

.....

.....

Item 7 Variation Date

*When do you want this
variation to start?*

☐ The date this document is signed by all the parties to it;

or

☐ On this date (specify):.....

Background

- A. The Landlord leased the Premises to the Tenant pursuant to the terms of the Lease described in the Schedule.
 - B. The Guarantor guarantees the performance of the Tenant's obligations under the Lease.
 - C. The parties agree to vary the Lease on and from the Variation Date on the terms set out in this Deed.
-

Agreement

1. Interpretation

1.1 Rules for interpreting this Deed

In this Deed unless the contrary intention appears:

- 1.1.1 each of the descriptions in the Schedule has the same meaning throughout;
- 1.1.2 a reference to a claim means any claim, action, proceeding, damage, loss, expense, compensation, cost or liability incurred by or made or recovered by or against a party however arising including present, unascertained, immediate, future, contingent or consequential;
- 1.1.3 a reference to a person includes a reference to a corporation, an association, joint venture, an unincorporated body, partnership, government or local authority or agency or other entity;
- 1.1.4 a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- 1.1.5 a reference to any legislation or to any provision of any legislation includes a reference to any modification or re-enactment of or any provisions substituted for such legislation or provisions;
- 1.1.6 an agreement, representation or warranty made in favour of two or more persons is made for the benefit of them jointly and for each of them severally;

1.2 Headings

Headings are inserted for convenience only and do not affect the interpretation of this Deed.

2. Variation of Lease

2.1 Varied Terms

The parties agree to vary the terms of the lease as described here:

Take care to:

- *describe the agreed variations carefully, precisely and clearly; and*
- *specify whether any change in price is GST inclusive or exclusive.*

2.1.1

.....

.....

2.1.2

.....

.....

2.1.3

.....

.....

2.1.4

.....

.....

This document is legally binding once signed.

If you have any queries or require any assistance in relation to this document please contact:

Paul Nunan, Accredited Commercial Leasing Specialist Lawyer Email: info@easternbridge.com.au

Eastern Bridge, Suite 1, 123 Whitehorse Rd, Balwyn, Victoria, 3103 Phone: 03 9006 5800

2.2 Operative date

The Lease is varied as described in clause 2.1 with effect on and from the Variation Date.

2.3 Lease otherwise unchanged

For the avoidance of doubt:

- 2.3.1 this Deed is supplemental to the Lease and will be interpreted having regard to the provisions of the Lease;
- 2.3.2 except as varied by this Deed, the Lease continues to have full force and effect;
- 2.3.3 the nature and effect of the Varied Terms do not constitute a surrender and re-grant of the Lease; and
- 2.3.4 this Deed is without prejudice to any right, Claim, liability or obligation of any party in respect of any breach of the Lease by another that arose prior to the Variation Date, which continue unaffected in full force and effect.

3. Acknowledgement by Guarantor

The Guarantor, by signing this document, acknowledges that its obligations to guarantee the performance of the Tenant's obligations under the Lease continue in respect of the Lease as varied by this Deed.

4. GST

4.1 Payment of GST

If any Party makes a taxable supply in connection with this Deed then the party liable to pay for the taxable supply must also pay, at the same time and in the same manner as the value is otherwise payable, the amount of any GST payable in respect of the taxable supply.

4.2 Tax invoice

The right of either Party to payment under this **Clause 4** is subject to a valid tax invoice, which complies with GST Law, being issued and delivered by the Supplier of the taxable supply to the Recipient.

5. General

5.1 Costs

Each party will bear its own costs in connection with the preparation, negotiation and execution of this Deed and performance of their obligations under it.

5.2 Further assurance

Each party must do all things reasonably necessary to give full effect to the terms of this Deed.

5.3 Counterparts

This Deed may be executed in counterparts. Each counterpart constitutes an original of this Deed, all of which together constitute one instrument. A party who has executed a counterpart of this Deed may exchange it with another party by faxing, or by emailing a pdf (portable document format) copy of, the executed counterpart to that other party, and if requested by that other party, will promptly deliver the original by hand or post. Failure to make that delivery by hand or by post will not affect the validity of this Deed.

5.4 Successors and assigns

This Deed is binding upon and enures to the benefit of each of the parties and their respective successors and permitted assigns.

5.5 No waiver or variation

A provision of or a right created under this Deed may not be waived or varied except in writing signed between the parties.

5.6 Severance

If any provision of this Deed is deemed invalid or unenforceable by a Court or Tribunal of competent jurisdiction, such provision will be read down to the extent possible to maximise its operation, and if it cannot be read down, will be severed from this Deed without affecting the operation or interpretation of any other provision of this Deed.

6. Governing Law and Jurisdiction

6.1 Law

This Deed is governed by the law of Victoria.

6.2 Jurisdiction

Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria.

Signing Part

Executed as a deed

[Landlord – if company]

Executed as a deed by the first landlord company:

Name of landlord.....

.....

Signature of director/secretary

.....

Name of director/secretary

.....

Signature of director (not applicable if company has a sole director and secretary)

.....

Name of director (not applicable if company has a sole director and secretary)

Executed as a deed by the second landlord company:

Name of landlord.....

.....

Signature of director/secretary

.....

Name of director/secretary

.....

Signature of director (not applicable if company has a sole director and secretary)

.....

Name of director (not applicable if company has a sole director and secretary)

[Landlord – if individual]

Signed and sealed by first landlord individual:

Name of landlord.....

.....

Signature of landlord

Signed in the presence of:

Name of independent adult witness

.....

Signature of independent adult witness

Signed and sealed by second landlord individual:

Name of landlord.....

.....

Signature of landlord

Signed in the presence of:

Name of independent adult witness

.....

Signature of independent adult witness

[Tenant – if company]

Executed as a deed by the first tenant company:

Name of tenant

.....

Signature of director/secretary

.....

Name of director/secretary

.....

Signature of director (not applicable if company has a sole director and secretary)

.....

Name of director (not applicable if company has a sole director and secretary)

Executed as a deed by the second tenant company:

Name of tenant

.....

Signature of director/secretary

.....

Name of director/secretary

.....

Signature of director (not applicable if company has a sole director and secretary)

.....

Name of director (not applicable if company has a sole director and secretary)

[Tenant – if individual]

Signed and sealed by first tenant individual:

Name of tenant

.....

Signature of tenant

Signed in the presence of:

Name of independent adult witness

.....

Signature of independent adult witness

Signed and sealed by second tenant individual:

Name of tenant

.....

Signature of tenant

Signed in the presence of:

Name of independent adult witness

.....

Signature of independent adult witness

[Guarantor – if company]

Executed as a deed by the first guarantor company:

Name of guarantor

.....

Signature of director/secretary

.....

Name of director/secretary

.....

Signature of director (not applicable if company has a sole director and secretary)

.....

Name of director (not applicable if company has a sole director and secretary)

Executed as a deed by the second guarantor company:

Name of guarantor

.....

Signature of director/secretary

.....

Name of director/secretary

.....

Signature of director (not applicable if company has a sole director and secretary)

.....

Name of director (not applicable if company has a sole director and secretary)

[Guarantor – if individual]

Signed and sealed by first guarantor individual:

Name of guarantor

.....

Signature of guarantor

Signed in the presence of:

Name of independent adult witness

.....

Signature of independent adult witness

Signed and sealed by second guarantor individual:

Name of guarantor

.....

Signature of guarantor

Signed in the presence of:

Name of independent adult witness

.....

Signature of independent adult witness

Annexure A

Attach a copy of the lease including a copy of all prior transfers and variations.

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Paul Nunan, Accredited Commercial Leasing Specialist Lawyer, Eastern Bridge

Suite 1, 123 Whitehorse Rd, Balwyn, Victoria, 3103 Phone: 03 9006 5800 Email: info@easternbridge.com.au

Eastern Bridge Pty Ltd ABN 80 893 349 028

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