

AGREEMENT TO LEASE

This form is approved by Auckland District Law Society Inc and the Real Estate Institute of New Zealand Inc

GENERAL address of the premises: Unit 2, 9 Buckleys Road, Linwood, Christchurch

DATE: 27th February 2023

LANDLORD: John Patrick Clyne

TENANT: Cosmic Corner Limited

GUARANTOR: Mark. C. Carswell, 185 Taylors Mistake Road

THE LANDLORD agrees to grant and the Tenant agrees to take a lease of the premises and the carparks (if any) described in the First Schedule together with the right to use the common areas of the property for the term from the commencement date and at the annual rent (subject to review if applicable) as set out in the First Schedule.

THE LANDLORD AND TENANT agree

- (1) as set out in the First, Second and Third Schedules
- (2) that the Landlord's fixtures, fittings and chattels contained in the premises are those described in the Fourth Schedule.

THE GUARANTOR (and if more than one jointly and severally), in consideration of the Landlord entering into this Agreement at the Guarantor's request, agrees with the Landlord to guarantee to the Landlord the obligations of the Tenant and to sign the Lease as a guarantor.

SIGNED by the Landlord:


 Director / ~~Trustee~~ / ~~Authorised Signatory~~ / ~~Attorney*~~
 Delete the options that do not apply
 If no option is deleted, the signatory is signing in their personal capacity

SIGNED by the Tenant:


 Director / ~~Trustee~~ / ~~Authorised Signatory~~ / ~~Attorney*~~
 Delete the options that do not apply
 If no option is deleted, the signatory is signing in their personal capacity

SIGNED by the Guarantor:


 Director / ~~Trustee~~ / ~~Authorised Signatory~~ / ~~Attorney*~~
 Delete the options that do not apply
 If no option is deleted, the signatory is signing in their personal capacity

*If this agreement is signed under:

- (i) a Power of Attorney – please attach a **Certificate of non-revocation** (available from ADLS: 4098WFP or REINZ); or
- (ii) an Enduring Power of Attorney – please attach a **Certificate of non-revocation and non-suspension of the enduring power of attorney** (available from ADLS: 4997WFP or REINZ).

Also insert the following wording for the Attorney's Signature above:

Signed by [full name of the donor] by his or her Attorney [attorney's signature].

WARNINGS (These warnings do not form part of this contract)

1. This contract is binding on all parties upon signing. All parties should seek legal advice **before signing**.
2. Before signing this contract the Tenant should make sure that the status of the property under the Resource Management Act 1991 is satisfactory for the Tenant's intended use of it.
3. The parties should agree upon and record the Landlord's fixtures, fittings and chattels and their condition in the Fourth Schedule.
4. The parties are advised to insert a clause requiring inclusion of a report of the condition of the premises as at the commencement of the lease.

Release date: 14 November 2017



13. LANDLORD'S INSURANCE:
(subclause 23.1 of the Lease)
(Delete or amend extent of cover as appropriate)

(Delete either (a) or (b): if neither option is deleted, then option (a) applies)

(Delete option (i) and complete option (ii) if required. If option (i) is not deleted and option (ii) is completed then option (ii) applies)

- (1) Cover for the building against damage and destruction by fire, flood, explosion, lightning, storm, earthquake, and volcanic activity; on the following basis:
- (a) Full replacement and reinstatement (including loss damage or destruction of windows and other glass).

OR

~~(b) Indemnity to full insurable value (including loss damage or destruction of windows and other glass).~~

- (2) Cover for the following additional risks:

- (a) (i) 12 months

OR

(ii) ~~months~~ indemnity in respect of consequential loss of rent and outgoings.

- (b) Loss damage or destruction of any of the Landlord's fixtures fittings and chattels.
(c) Public liability.

14. NO ACCESS PERIOD:
(subclause 27.6 of the Lease)

(Delete option (1) and complete option (2) if required. If option (1) is not deleted and option (2) is completed then option (2) applies)

- (1) 9 months

OR

- (2)

15. PROPORTION OF OUTGOING:
(subclause 3.1 of the Lease)

100% which at commencement date is estimated to be \$ 6,615.00 plus GST per annum

16. LIMITED LIABILITY TRUSTEE:

17. OUTGOINGS:
(clause 3 of the Lease)

- (1) Rates or levies payable to any local or territorial authority.
- (2) Charges for water, gas, electricity, telecommunications and other utilities or services, including line charges.
- (3) Rubbish collection and recycling charges.
- (4) New Zealand Fire Service charges and the maintenance charges in respect of all fire detection and fire fighting equipment. *\$500 X SR*
- (5) Any insurance excess (but not exceeding ~~\$2000~~) in respect of a claim and insurance premiums and related valuation fees.
- (6) Service contract charges for air conditioning, lifts, other building services and security services.
- (7) Cleaning, maintenance and repair charges including charges for repainting, decorative repairs and the maintenance and repair of building services to the extent that such charges do not comprise part of the cost of a service maintenance contract, but excluding charges for structural repairs to the building (minor repairs to the roof of the building shall not be a structural repair), repairs due to defects in design or construction, inherent defects in the building and renewal or replacement of building services.
- (8) The provisioning of toilets and other shared facilities.
- (9) The cost of maintenance of lawns, gardens and planted areas including plant hire and replacement, and the cost of repair of fences.
- (10) Yard and carparking area maintenance and repair charges but excluding charges for repaving or resealing.
- (11) Body Corporate charges for any insurance premiums under any insurance policy effected by the Body Corporate and related valuation fees and reasonable management administration expenses.
- (12) ~~Management expenses.~~
- (13) The costs incurred and payable by the Landlord in supplying to the territorial authority a building warrant of fitness and obtaining reports as required by sections 108 and 110 of the Building Act 2004 but excluding the costs of upgrading or other work to make the building comply with the Building Act 2004.

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Landlord interest at the default interest rate on the portion of the deposit so unpaid for the period from the due date for payment until payment. Unless a contrary intention appears on the front page or elsewhere in this agreement the default interest rate is equivalent to the interest rate charged by the Inland Revenue Department on unpaid tax under the Tax Administration Act 1994 during the period for which the default interest is payable, plus 5 per cent per annum.

LEASE PAYMENTS

- 3.1 The Tenant shall pay the annual rent by equal monthly payments in advance as from the commencement date specified in the First Schedule.
- 3.2 The Tenant shall pay the Goods and Services Tax payable by the Landlord in respect of the rent and other payments payable by the Tenant pursuant to the Lease.
- 3.3 In addition to the rent the Tenant shall pay the outgoings specified in the First Schedule and where any outgoing is not separately assessed in respect of the premises then the Tenant shall pay such proportion thereof as is specified in the First Schedule or if no proportion is specified then a fair proportion.

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- 4.1 The Tenant shall enter into a formal lease with the Landlord to be prepared by the Landlord's lawyer using the current Auckland District Law Society Inc Deed of Lease form amended in accordance with the provisions of this Agreement ("Lease"). Each party will pay their own costs of the negotiation and preparation of the Lease and any deed recording a rent review or renewal.
- 4.2 Unless otherwise set out in the Third Schedule, it is agreed that the Landlord's fixtures, fittings and chattels contained in the premises as more particularly described in the Fourth Schedule are in a good state of repair.
- 4.3 Notwithstanding that the Lease may not have been executed, the parties shall be bound by the terms, covenants and provisions contained in this Agreement and in the Lease as if the Lease had been duly executed.

DISPUTE RESOLUTION

- 5.1 Unless otherwise provided in this Agreement, if a party considers that there is a dispute in respect of any matters arising out of, or in connection with this Agreement, then that party shall immediately give notice to the other party setting out details of the dispute. The parties will endeavour in good faith to resolve the dispute between themselves within five (5) working days of the receipt of the notice, failing which the parties will endeavour in good faith within a further ten (10) working days to appoint a mediator and resolve the dispute, time being of the essence.
- 5.2 Neither party will commence legal proceedings against the other except for injunctive relief before following the procedure set out in subclause 5.1.

NO ASSIGNMENT

- 6.1 The Tenant shall not assign or agree to assign this Agreement or the Tenant's interest under this Agreement and the Tenant shall not register any caveat against the land in respect of its interest under this Agreement. The Tenant shall not be entitled to exercise the right of assignment contained in the Lease until such time as the Tenant has signed the Lease.

AGENT

- 7.1 If the name of a licensed real estate agent is recorded on this Agreement it is acknowledged that the lease evidenced by this Agreement has been made through that agent whom the Landlord appoints as the Landlord's agent to effect the Lease. The Landlord shall pay the agent's charges including GST for effecting such Lease.

LIMITATION OF LIABILITY

- 8.1 If any person enters into this Agreement as trustee of a trust, then:
 - (1) That person warrants that:
 - (a) that person has power to enter into this Agreement under the terms of the trust; and
 - (b) that person has properly signed this Agreement in accordance with the terms of the trust; and
 - (c) that person has the right to be indemnified from the assets of the trust and that right has not been lost or impaired by any action of that person including entry into this Agreement; and
 - (d) all of the persons who are trustees of the trust have approved entry into this Agreement.
 - (2) If that person has no right to or interest in any assets of the trust except in that person's capacity as a trustee of the trust, that person's liability under this Agreement will not be personal and unlimited but will be limited to the actual amount recoverable from the assets of the trust from time to time ("the limited amount"). If the right of that person to be indemnified from the trust assets has been lost or impaired as a result of fraud or gross negligence that person's liability will become personal but limited to the extent of that part of the limited amount which cannot be recovered from any other person.
- 8.2 Notwithstanding subclause 8.1, a party to this Agreement that is named in item 16 of the First Schedule as a limited liability trustee, that person's liability will not be personal and unlimited but limited in accordance with subclause 8.1(2).

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SECOND SCHEDULE

DEFINITIONS, NOTICES AND INTERPRETATION

1.1 Definitions

- (1) Unless the context requires a different interpretation, words and phrases not otherwise defined have the same meaning as in section 4 of the Property Law Act 2007 and the Lease.
- (2) "Agreement" means this document including the front page, any further terms and any schedules and attachments.
- (3) "Working day" means any day of the week other than:
 - (a) Saturday, Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, and Labour Day; and
 - (b) a day in the period commencing on the 24th day of December in any year and ending on the 5th day of January in the following year, both days inclusive; and
 - (c) the day observed as the anniversary of any province in which the premises are situated.
- (4) A Working day shall be deemed to commence at 9.00 am and to terminate at 5.00 pm.
- (5) Any act done pursuant to this agreement by a party after 5.00 pm on a Working day, or on a day which is not a Working day, shall be deemed to have been done at 9.00 am on the next succeeding Working day.
- (6) Where two or more acts (including service of notice) done pursuant to this Agreement are deemed to have been done at the same time, they shall take effect in the order in which they would have taken effect but for subclause 1.1(5).

1.2 Notices

All notices must be in writing and must be served by one of the following means:

- (1) In the case of a notice under sections 245 or 246 of the Property Law Act 2007 in the manner prescribed by section 353 of that Act; and
- (2) In all other cases, unless otherwise required by sections 352 to 361 of the Property Law Act 2007:
 - (a) in the manner authorised by sections 354 to 361 of the Property Law Act 2007, or
 - (b) by personal delivery, or by posting by registered or ordinary mail, or by facsimile, or by email.
- (3) In respect of the means of service, a notice is deemed to have been served:
 - (a) In the case of personal delivery, when received by the addressee.
 - (b) In the case of posting by mail, on the second working day following the date of posting to the addressee's last known address in New Zealand.
 - (c) In the case of facsimile transmission, when sent to the addressee's facsimile number.
 - (d) in the case of email, when acknowledged by the addressee orally or by return email or otherwise in writing except that return emails generated automatically shall not constitute an acknowledgement.
- (4) In the case of a notice to be served on the Tenant, if the Landlord is unaware of the Tenant's last known address in New Zealand or the Tenant's facsimile number, any notice placed conspicuously on any part of the premises shall be deemed to have been served on the Tenant on the day on which it is affixed.
- (5) A notice shall be valid if given by any director, general manager, lawyer or other authorised representative of the party giving the notice.
- (6) Where two or more notices are deemed to have been served at the same time, they shall take effect in the order in which they would have been served but for subclause 1.1(5).
- (7) Any period of notice required to be given under this agreement shall be computed by excluding the date of service.

1.3 Interpretation

- (1) Headings are for information only and do not form part of this Agreement.
 - (2) The terms, conditions and covenants contained in this Agreement shall not merge insofar as they either have not been fulfilled at the time of the execution of the Lease or are not reflected in the Lease but shall remain in full force and effect.
- 1.4 If there is more than one Landlord or Tenant, the liability of the Landlords or the Tenants as the case may be is joint and several.
 - 1.5 Where the Tenant executes this Agreement with provision for a nominee or on behalf of a company to be formed, the Tenant shall remain liable for all the obligations on the part of the Tenant hereunder until such time as the Tenant and the Guarantor have signed the Lease.
 - 1.6 This agreement may be executed in any number of counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument. Communication of execution of this agreement may be made by each party transmitting by facsimile or email to the other party or their respective agents a counterpart of this agreement executed by the party sending the facsimile or email.

DEPOSIT

- 2.1 The Tenant shall pay as a deposit an advance rental payment of the amount specified in the First Schedule. The deposit shall be payable to the Landlord or the Landlord's agent immediately upon execution of this Agreement by all parties and/or at such other time as is specified in this Agreement. The person to whom the deposit is paid shall hold it as a stakeholder until this Agreement is unconditional or is avoided.
- 2.2 The Landlord shall not be entitled to cancel this Agreement for non-payment of the deposit unless the Landlord has first given to the Tenant three working days' notice in writing of intention to cancel and the Tenant has failed within that time to remedy the default. No notice of cancellation shall be effective if the deposit has been paid before the notice of cancellation is served.
- 2.3 Without prejudice to any of the Landlord's rights or remedies, including any right to claim for additional expenses and damages, if the deposit or any portion thereof is not paid upon the due date for payment the Tenant shall pay to the

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THIRD SCHEDULE

FURTHER TERMS (if any)

9.0 DEPOSIT

9.1 Upon signing of this Agreement to Lease, and satisfaction of any Further Terms (if any) contained herein, both the Tenant and Landlord acknowledge and confirm this contract is unconditional in all respects and authorise the disbursement of the deposit after the required ten (10) working day clearance.

10.0 SIGNATORY ACKNOWLEDGMENT

10.1 All signatories to this agreement hereby acknowledge that they;

- a. have been advised by the licensee(s) named on this agreement to seek legal advice before signing this agreement and
- b. are aware that they can, and may need to, seek technical or other advice and information before signing this agreement and
- c. have had reasonable opportunity to obtain the advice referred to in paragraph (a) and (b) above.

11.0 COMMENCEMENT DATE

11.1 The Landlord and Tenant agree that the commencement date of this agreement is detailed as 1 June 2023 to allow for the Tenant to carry out their fitout, but if the Tenant completes the fitout before this date, then the commencement date can be made earlier with mutual consent and agreement. However, should the fitout take longer than the 1 June 2023, then this agreement will still commence on the date of 1 June 2023 regardless.

12.0 TENANTS FITOUT

12.1 The Landlord agrees that the Tenant may complete their own fitout at no cost to the Landlord. The fitout is to be carried out in a tradesman like standard and any consents or permits required will be at the Tenants cost and it is their responsibility to obtain such consents and permits if necessary. At the expiry of the tenancy, the fitout must be removed by the Tenant unless agreed upon with the Landlord. If the fitout remains, the Tenant will receive no compensation and none will be expected.

13.0 CAR PARKS

13.1 The tenancy has two parks allocated to it, but these are classed as common parks. The allocated parks are located directly in front of the unit but should the allocated parks be taken, then the other common parks may be used by the Tenant. The parks are meant for customers parking, not all day staff parking, and we ask that you abide by this guidance and fair play to all other Tenants.

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FOURTH SCHEDULE

LANDLORD'S FIXTURES, FITTINGS AND CHATTELS (if any)

(Subclause 4.2)

- Light fittings
- Fixed floor coverings

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DATED 27th February 2023

BETWEEN

Landlord John Patrick Clyne

Ph 027 217 8308

Fax _____

Email _____

AND

Tenant Cosmic Corner Limited

Ph 021 457 400

Fax _____

Email mark@cosmicnz.co.nz

AGREEMENT TO LEASE

© This form is copyright to
Auckland District Law Society Inc

General address of the premises:
Unit 2, 9 Buckleys Road, Linwood, Christchurch

Saunders + Co / Paul Couglan.

Landlord's lawyer (indicate individual acting)

White Fox & Jones
Lauraine Frampton
Email: lf@whitefox.co.nz
Ph: 027 431 8788

Tenant's lawyer (indicate individual acting)

Deposit paid to Whalan & Partners Ltd Trust Account

Amount: \$ 4,430.00 (\$5,094.50 GST inclusive)

Date paid A/C Number: 12 3191 0007646 01

LEASE NEGOTIATED BY:

Whalan and Partners Ltd - Commercial -

Licensed Real Estate Agent

Office a Member of the Bayleys Realty Group

Address 3 Deans Ave, Addington

PO Box 36533 Christchurch 8146

Telephone Ph: 03 375 4700

Manager William Wallace

Salesperson Michael Campbell (021 611 973)

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