

DATED \_\_\_\_\_ 2023

## WH BRAKSPEAR & SONS LIMITED



### FIVE YEAR TENANCY AGREEMENT

Relating to premises known as

**(Public House and address)**

WH Brakspear & Sons Limited  
The Bull Courtyard  
Bell Street  
Henley-on-Thames  
RG9 2BA

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### Tenancy Particulars

<b>Date of Tenancy Agreement</b>	
<b>Landlord details are (“we/us/our”)</b>	WH Brakspear & Sons Limited The Bull Courtyard Bell Street Henley-on-Thames Oxon RG9 2BA Company Registration 46656
<b>Tenant details are (“you”)</b>	(Name) (Address) (Company Registration No)
<b>Your Guarantor’s details are:</b>	(Name) (Address)
<b>Damages Multiplier</b>	£ per Composite Barrel
<b>Description of Property</b>	All interior (including the domestic accommodation) and exterior areas within the demise of the (Pub name and address)
<b>Exclusion Notice</b>	A notice served on ( )
<b>Insurance</b>	We will insure the buildings in return for you paying the Insurance Rent of £( ) plus VAT. You must insure the contents and other items.
<b>Permitted Use</b>	Only as a Public House as described in clause 33
<b>Purchase of Drinks</b>	All beers ciders and other drinks must be purchased from the Landlord or the Landlord’s nominated supplier with the exception of: (Draught Beer) (Draught Ciders) (Packaged Beers) (Packaged Ciders) (Wines) (Spirits) (Minerals) (as detailed on your Tie Release Discount Target Agreement dated )
<b>Rent</b>	£( ) plus VAT, (except in the first and second Year of the Term when the rent shall be £( ) and £( ) respectively), subject to review in accordance with section 3
<b>Service Charge</b>	£( ) plus VAT as explained in clause 8
<b>Starting Deposit</b>	£ ( ) amounting to the higher of £5,000 and three months’ rent
<b>Term</b>	Five Calendar Years from the Term Start Date (unless terminated in accordance with these provisions)
<b>Term Start Date</b>	( )
<b>Your right to end the Lease</b>	By giving 6 month’s written notice, on the sixth, twelfth, eighteenth, twenty fourth, thirtieth, thirty sixth, forty second, forty eighth and fifty fourth month anniversary of the Term Start Date

The words and phrases referred to above form part of this Tenancy and where necessary are to be interpreted in accordance with the Definitions section. This Tenancy uses defined terms designated by starting with capital letters and their meanings can be found in Section 46. This Tenancy Agreement is completed on and takes legal effect from the Date of Tenancy

## Section 1

### Your Occupation

- **Letting**
- **Representations**
- **Restrictions on dealing with the Property**
- **Security of Tenure**

## **1 Letting**

- 1.1 By entering into this Tenancy, we are letting the Property to you for the Term and will allow you to occupy the Property without any interruption subject to you performing your obligations under this Tenancy and paying to us the payments set out in clause 5.
- 1.2 This Tenancy is subject to our reserved rights set out in Section 40.

## **2 Representations**

- 2.1 This Tenancy, the Appendix, Our Price List and any supplemental deed and any side letters that we have issued to you comprise the whole of this Tenancy. You acknowledge that you have not entered into this Tenancy in reliance on any statement, representation, or confirmation of any nature in relation to the Property, Fixtures and Fittings, Trade Inventory or Business. You confirm that you have taken professional advice before entering into this Tenancy and that you are relying on that advice and your own assessment of the Property and Business.
- 2.2 You do not have any claim against us in relation to any representation or statement made by us or our representatives before entering into this Tenancy, unless that representation or statement was made fraudulently.

## **3 Restrictions on Dealing with the Property**

- 3.1 You must not assign, transfer, sell, let, underlet, share occupation or possession, or deal with the Property in any way including creating any form of contractual or virtual assignment.
- 3.2 You must not allow anyone other than yourself and your family to occupy or share occupation with you of the Property, except that you may allow short stay overnight guests to stay in parts of the Property designated for bed and breakfast use if you have such accommodation and the necessary statutory consents to do so.
- 3.3 When we ask, you must provide to us full details of any person living or staying in the Property and provide any information that we request about the terms of their occupation.

## **4 Security of Tenure**

- 4.1 We have validly served on you an Exclusion Notice and you have validly acknowledged receipt of it both Notice and the receipt being pursuant to the provisions of Section 38A of the Landlord & Tenant Act 1954 (as amended) and we agree that the provisions of Sections 24 to 28 of that Act shall not apply to this Tenancy.

## Section 2

### What you have to pay

- **Payments**
- **Deposit**
- **Outgoings**
- **Service Charge**
- **VAT**
- **Interest**
- **Acceptance of Rent and Application of Monies**

## **5 Payments**

- 5.1 You must pay to us the following:
  - 5.1.1 the Rent and the Insurance Rent and the Service Charge weekly fortnightly or monthly in advance as we may specify from time to time;
  - 5.1.2 the Amusement Machine Contribution on demand;
  - 5.1.3 all sums due for Tied Drinks payable as we may specify from time to time;
  - 5.1.4 our costs and expenses that we incur both internally and externally in relation to any application that you make for Consent, any notice or schedule that we serve on you, or any action that we take in connection with a breach of your obligations;
  - 5.1.5 any agreed periodic payments to increase the Starting Deposit to the Deposit;
  - 5.1.6 any VAT payable on the payments you make.
- 5.2 All payments must be made by direct debit or another method that we agree and you agree that we may give less than 10 working days notice of collection of any sum by variable direct debit.
- 5.3 You must pay all sums payable to us under this Tenancy without making any set off, deductions or claims for any amounts that you believe we owe to you.
- 5.4 On completion of this Tenancy you must purchase the Trade Inventory and pay to us:
  - 5.4.1 Rent Insurance Rent and Service Charge and VAT for the period from the Start Date to the last day of the period as we may specify, and;
  - 5.4.2 the Starting Deposit;

## **6 Deposit**

- 6.1 You must maintain the Deposit at a level that is no less than the Starting Deposit throughout the Term.
- 6.2 We will hold the Deposit in an interest bearing account (the rate of interest to be at our reasonable discretion) as security for the performance of your obligations to us, and for any expenses and losses which we incur due to your breach. We will not be holding the Deposit on trust for you. The fact that we hold a Deposit or make a withdrawal from it, will not prevent us from taking action against you for any breach of your obligations.
- 6.3 We may withdraw from the Deposit at any time:
  - 6.3.1 any sums due to us which are overdue for 7 days or more; and



- 6.3.2 the amount of any proper losses, costs or expenses we incur or payments we make due to a breach of any of your obligations and you must then repay to the Deposit with an amount equal to the sum we have withdrawn.
- 6.4 We will add all interest to the account and will repay the Deposit and any interest accrued to you (subject to clause 7.5) within a reasonable period of time after you vacate the Property at the expiry of the Term but before we refund the Deposit we may deduct all sums that you owe under the terms of this Tenancy or any other agreement you have entered into with us (including any sums properly required to repair the Property due to your breach).
- 6.5 If we sell our interest in the Property subject to this Tenancy, we will pass the Deposit onto the new owner after deducting any sums that we are entitled to deduct under this Tenancy.

## **7 Outgoings**

- 7.1 You must pay for all rates, taxes, outgoings and utilities in relation to the Property or the Business (except for taxes that we have to pay because of our dealings with our interest in the Property), or a fair proportion (decided by us) of the relevant outgoing where the Property forms part of a larger property to which the outgoing relates.
- 7.2 You will allow us to conduct any proceedings relating to the rateable value of the Property.

## **8 Service Charge**

- 8.1 You must pay us the Service Charge as set out in clause 5.1 above.
- 8.2 The Service Charge is subject to annual review and we may alter following discussion with you the Service Charge but we shall give you written notice of any change of not less than 4 weeks.
- 8.3 The Service Charge covers the cost of expenditure on Services required to run your business.

## **9 VAT**

- 9.1 All payments under this Tenancy are exclusive of VAT and you must pay any VAT payable at the time the payment is made.
- 9.2 Where you are obliged to reimburse any costs or expenditure that we incur under this Tenancy, you must pay the amount equal to any VAT on those costs or expenditure to the extent that we cannot recover that VAT.

## **10 Interest**

- 10.1 You must pay Interest on any Rents or other sums owing to us not paid by seven days after the due date. Interest is payable from the due date until the date we receive payment and is to apply both before and after judgment.

## **11 Acceptance of Rent and Application of Monies**

- 11.1 We may apply any monies that we receive from you towards any debt that you owe us, even if you paid the monies to us for a different reason.
- 11.2 If we agree that you may defer any payment due to us, those sums will remain due as from their due date.
- 11.3 If we accept any payments after you have committed a breach of your obligations to us, this does not imply that we have waived your liability in relation to that or any continued breach of obligation.

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**Section 3**

**Rent Review**

- **Annual Indexation Review**

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## **12 Annual Indexation Review**

- 12.1 On each anniversary of the Term Start Date we will adjust the Rent by the percentage change in the All Items Index of Retail Prices since the previous year. We will notify you in writing of any adjustment to the Rent. The Rent can go up or down but will not drop below the starting rent specified in the Tenancy Particulars.

SAMPLE

## Section 4

### Looking after your Property

- **Repairs**
- **Remedying Breach**
- **Services**
- **Decoration and Cleaning**
- **Alterations**
- **Carrying out works**
- **Our Obligations**

### **13 Repairs**

- 13.1 You must keep the interior of the Property in good condition at all times and repair any damage you cause to the Property. You must also carry out the repairs and maintenance listed in the Repair and Maintenance Guide (Appendix 1).
- 13.2 You are not responsible for repairing the Main Structure unless you have caused the damage in which case you must repair the damage that you have caused.
- 13.3 If you believe that any repairs are required to the Main Structure you must inform us immediately, giving details of the repairs required.
- 13.4 You are not liable to repair any damage caused by an Insured Risk unless you have caused or contributed to that damage due to a breach of your obligations, or due to your negligence, or if your actions have (in whole or in part) caused the payment of insurance proceeds to be refused.
- 13.5 You must replace any broken glass as soon as possible.
- 13.6 You must keep the Fixtures and Fittings in good repair and in working order, and if necessary, renew or replace them with new or equivalent items.
- 13.7 You must keep all access ways, car parks, gardens, patios, decking play areas or other open areas clean and tidy properly tended and stocked and free from weeds with all trees properly trimmed or lopped any ditch property cleared and safe for public access.
- 13.8 You must keep all Pipes, toilets and sanitary equipment free flowing, install grease traps where appropriate and must take reasonable steps to prevent blockage and damage. You must also install and maintain fume extraction hoods where required to manage fumes and replace filters regularly.
- 13.9 You must to put and keep all pipes running water gutters downpipes gullies drains sanitary apparatus and ducting clean and clear of obstruction and in good working order and where applicable to arrange for cess pits to be emptied and septic tanks to be kept lawfully operating and ditches cleared as necessary.
- 13.10 You must ensure that any grease traps are kept clear and regularly cleaned and be responsible for any damage caused to any grease trap due to neglect or breach by you and to pay us all monies paid by us in repairing any grease trap and in addition any part of the drainage system serving the Property damaged as a result.
- 13.11 You must regularly clean and maintain all sump pumps extractor fans cooker hoods filters air cleaning equipment and other similar equipment.
- 13.12 If you and we have a dispute in relation to your repairing obligations, either during the Term or at the end of the Term, either of us may refer the matter to an Independent Expert.

## **14 Remedying Breach**

- 14.1 If you do not comply with your repair and decoration obligations to us then in addition to any other rights we may have:
- 14.1.1 we may serve a notice on you specifying the breach; and
  - 14.1.2 when you receive that notice you must carry out all necessary works to remedy the breach within three months (or sooner if it is urgent) and if you do not do so, we may enter the Property to carry out the works and you must provide us with unrestricted access and cooperation and remove any Fixtures and Fittings that we require removing and provide us with water and/or electricity accommodation and general facilities as we may reasonably require in carrying out the necessary repairs and to pay to us on demand (with Interest) all costs that we incur as a debt.

## **15 Services**

- 15.1 Subject to receiving the Service Charge payments, we will carry out the following services when we believe they are reasonably needed to enable you to continue to run the Business from the Property:
- 15.1.1 testing, servicing and maintaining gas boilers, gas water heaters (excluding gas cooking appliances but including gas safety checks on pipework) and electrical installations (but not portable appliances); and
  - 15.1.2 maintaining and repairing any cellar cooling equipment, cellar hoists and lifts.
  - 15.1.3 other mandatory checks such as emergency lighting fire alarm and fire fighting equipment testing, chimney sweeping and chimney fan servicing, thatch roof inspections and Property condition surveys.

## **16 Decoration and Cleaning**

- 16.1 You must decorate the interior of the Property as often as we reasonably require and in the last 12 months of the Term
- 16.2 You must obtain our Consent (which we will not unreasonably withhold or delay) to any change of colour scheme or decorative finish.
- 16.3 You must keep the interior and exterior of the Property and any gardens, car parks, access ways or other open areas in a clean and dispose of rubbish daily in an appropriate manner.
- 16.4 You must ensure that all areas of the Property used in the preparation service and storage of food and drink comply with all health and safety and food safety legislation.
- 16.5 You must clean all windows at least monthly.

## **17 Alterations**

- 17.1 You must not carry out any alterations to the Property unless required to do so by Legal Obligation

## **18 Carrying out works**

- 18.1 When carrying out any repairs or decoration to the Property you must:
- 18.1.1 carry out the works in a good and workmanlike manner, using good quality materials and as quickly as practicable;
  - 18.1.2 comply with all Legal Obligations;
  - 18.1.3 comply with any reasonable conditions that we impose and you must complete the works to our reasonable satisfaction; and
  - 18.1.4 comply with the requirements of our insurers.
- 18.2 If we ask you to do so, at the end of this Tenancy you must at your own cost reinstate all alterations or additions made to the Property at any time during the Term or during the period of any agreement for tenancy relating to this Tenancy.
- 18.3 You must not apply for or implement a planning permission without our permission and if works for which planning permission is granted are to be carried out you must complete such works and comply with all conditions as quickly as practicable and before the end of the Term.

## **19 Our Obligations**

- 19.1 In addition to our rights under clause 14 we may from time to time carry out any repairs to the Property for which you are not responsible but we are under no obligation to do so.
- 19.2 If we should elect to carry out any repairs whether under this clause or clause 16 we shall not be liable to you for any loss disturbance or inconvenience suffered by you or the Business during the carrying out of the works



## **Section 5**

### **Insurance**

- **What we must do**
- **What you must do**
- **Suspension of Rent**
- **Termination Following Damage**

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## **20 What we must do**

- 20.1 We will insure the Property including the effect on the Property should the Licenses be lost (except for any fixed glass) at competitive rates taking into account the policy terms for the full reinstatement value (in our reasonable opinion), against the Insured Risks, to the extent that this insurance is usually available for properties such as the Property, subject to any exclusions and limitations which are usual in the UK insurance market. We will not be obliged to maintain insurance if the policy becomes ineffective due to a breach of your obligations.
- 20.2 If the Property is damaged by an Insured Risk, then as soon as all necessary labour, materials and permissions are available (which we will use reasonable endeavours to obtain) we will spend the insurance proceeds that we receive (except those relating to loss of rent) in reinstating the Property in a form (if practicable) that is reasonably equivalent to that existing before the damage (but we will not be obliged to provide an identical replacement). If the insurance proceeds or part of them are withheld due (partly or wholly) to your default we will not be obliged to commence reinstatement until you comply with clause 21.6.
- 20.3 Any proceeds of insurance received under a policy affected by us under this Tenancy or any amounts that you pay to us under your insurance policies, belong to us absolutely.
- 20.4 If you ask in writing we will provide a summary of the terms of our policy relating to the Property (but not more than once a year).

## **21 What you must do**

- 21.1 You must insure for the full reinstatement value (in our reasonable opinion) the following items:
- 21.1.1 the Trade Inventory;
  - 21.1.2 any fixed glass at the Property;
  - 21.1.3 all trading stock and glassware at the Property;
  - 21.1.4 public third party property owner's and employer's liability; and
  - 21.1.5 the effect on the Business of loss of profit
- against usual risks on usual commercial terms with a reputable insurer, and you must note our interest on all the insurance policies. You must provide us, when we ask, with evidence that you have done this, and if you do not we may effect these insurances on your behalf and charge the cost to you.
- 21.2 You must tell us straight away if something happens which may lead to a claim under any of our or your insurance policies relating to the Property or Business. You must spend any proceeds of insurance that you receive under the policies that you have taken out in relation to the Property or Business in repairing or replacing the items damaged. If the insurance proceeds are insufficient you must make up any shortfall yourself.

- 21.3 You must pay to us on demand all amounts that you receive under any insurance policy relating to the loss of the Licences.
- 21.4 You must comply with the conditions and recommendations made by our insurers.
- 21.5 You must not take any insurance policy out in relation to the Property which could prejudice our policies.
- 21.6 If any insurance proceeds are withheld because you have breached your obligations to us, you must pay to us on demand an amount equal to the sum withheld.

## **22 Suspension of Rent**

- 22.1 If the Property is damaged or destroyed by any of the Insured Risks so that it is not fit for the Permitted Use, then (unless the insurance proceeds for loss of rent are withheld due to a breach of your obligations), the Rent (or a fair proportion of it if there is only damage to part of the Property) will not be payable from the date of the damage until the earlier of:
  - 22.1.1 the Property being reinstated; or
  - 22.1.2 the end of this Tenancy.

## **23 Termination Following Damage**

- 23.1 If the Property cannot be reasonably be used for the Business within one year after insured damage has occurred, either of us may determine this Tenancy by serving written notice on the other at any time before the Property can be used for the Business again
- 23.2 If the Property is destroyed or so badly damaged that we reasonably believe that the damage cannot be repaired within a year then we may bring this Tenancy to an end at any time after the damage has occurred by giving you one month's written notice.
- 23.3 Any dispute under this paragraph shall be determined by the Independent Expert.

## Section 6

### Operating the Business

- **Business Obligations**
- **Maintenance of Stock**
- **Accounting Information**
- **Signs and Notices**
- **Point of Sale Material**
- **Licences**
- **Trade Inventory**
- **Amusement Machines**
- **Employees**
- **Use of Property**
- **Legal obligations**
- **Quality Standards**

## **24 Business Obligations**

- 24.1 You must conduct the Business from the Property for the minimum of the Trading Hours each day.
- 24.2 You must either supervise and manage the Business personally or ensure that it is supervised and managed by a Manager.
- 24.3 You must live in the residential accommodation at the Property (if any) unless we give Consent to the contrary.
- 24.4 You must not be employed or be connected with the running of any business from the Property other than the Business unless you have our Consent.
- 24.5 You must conduct the Business in an efficient, orderly and polite manner, in compliance with all relevant Legal Obligations and in such a way as to promote and develop the Business and to protect the Licences
- 24.6 You must sell Tied Drinks and other drinks and food at reasonable prices adequately displaying the prices and to participate in all of our reasonable promotion schemes relating to the Business
- 24.7 You must ensure that you and all your staff are at all times sufficiently trained to run the Business effectively and to perform your duties.
- 24.8 You must supply whenever reasonably required by the public suitable refreshment other than intoxicating liquor and keep the Property open for sale of food and non-alcoholic beverages at all reasonable times (if any) when there may be a sufficient demand for such items.
- 24.9 You must only use the pub website domain name as provided by us, and you are not entitled to create or purchase an alternative domain name for the Business operated from the Property unless you have our consent.

## **25 Maintenance of Stock**

- 25.1 You must keep the cellar in a condition suitable for the storage of wet and dry products and comply with good practice in relation to the storage of goods and drinks in the cellar.
- 25.2 You must keep an adequate stock of food and drink and non-alcoholic beverages to meet the reasonable demands of the customers of the Business, but without prejudicing consumer demand for the Tied Drinks.
- 25.3 You must ensure that all food sold is fresh and prepared and served in a hygienic manner and that all drinks products sold are of the same quality as supplied to you and not diluted or tampered with.
- 25.4 You must not tamper with or bypass any Cellar Monitoring Equipment or interfere with any drinks dispensing equipment.

## **26 Accounting Information**

- 26.1 You must at all times have appointed a firm or firms providing book keeping and accountancy and stock taking services to the Business and must procure the provision of management accounts and VAT returns not less often than once every 3 months and wet stock take not less often than once every 2 months and you must determine an accounting year for the Business and procure year end accounts for the Business within 6 months of the end of each accounting year and you must require that such firm or firms confirms in writing to us that you have complied with these requirements and to provide us with copies and any further financial details as we may be reasonably require upon request.
- 26.2 During the first calendar year of the Term you will appoint a firm or firms providing book keeping and accountancy and stock taking services to the Business from our panel of recommended firm or firms.
- 26.3 We will require copies of management accounts and VAT returns each quarter of the first calendar year of the Term.

## **27 Signs and Notices**

- 27.1 You must display on the outside of the Property, and maintain in a clean condition, a sign displaying the name of the public house in the form for which we give Consent. You must not put up any other signs or banners on the exterior of the Property or change the signs without our Consent.
- 27.2 You must display on the Property any signs required by law.
- 27.3 You must not change the name of the public house without our Consent.
- 27.4 You must not alter any signs displaying the name of the public house without our Consent.
- 27.5 You must exhibit on the Property any advertisements and notices supplied by us for any purpose relating to the Property or to goods supplied by us.

## **28 Point of Sale Material**

- 28.1 You must not exhibit point of sale materials including but not limited to table umbrellas bar towels beer mats etc that advertise products and brands other than products and brands owned by us without our Consent.

## **29 Licences**

- 29.1 To ensure that the Licences or their renewal are not prejudiced or endangered and without

prejudice and without prejudice to the generality of the foregoing to manage and operate the property in a legal lawful and orderly manner promoting compliance with the licensing objectives as set out in the Licensing Act 2003 and of the licensing authority relevant to the Premises

- 29.2 To give immediate notice to the Landlord of any complaint or any notice of intention to revoke or oppose a renewal of the Licences or any of them or of any arrest charge or conviction of the Tenant or employee of the Tenant (the Tenant having notice hereof)
- 29.3 To maintain and renew as necessary all Licences and not to surrender any Licences or apply for any different or additional Licences without the consent of the Landlord excepting the giving of temporary event notices
- 29.4 At all times to be designated premises supervisor for the Premises or in the alternative with the consent of the Landlord to cause a manager to be such designated premises supervisor and in addition to employ at the Premises persons who are suitably qualified and authorised by law to conduct the business during any temporary absence of the Tenant
- 29.5 Not without the consent of the Landlord to apply for or obtain any Licence that may be required to permit the sale of drinks at premises other than the Premises
- 29.6 Not to apply for the Premises Licence nor to make any application to vary the Premises Licence and if required to give written consent in connection with any application by the Landlord to become the holder of the Premises Licence and if the Tenant shall be in receipt of the Premises Licence then to immediately hand it over to the Landlord and to hold the same in trust for the Landlord until so handed over.
- 29.7 At your own expense to take such steps in conjunction with the matters referred to in this clause at the Landlord may reasonably require.
- 29.8 At the end of the Term you must consent to the transfer of the Premises Licence to us (or whoever we direct) and procure that the Designated Premises Supervisor consents to its replacement.
- 29.9 If you do not comply with clause 29.8 above, it will be assumed that you appoint us as your attorney and agent to consent to the transfer of the Premises Licence, and for us to make any application for the transfer of the Premises Licence to us with immediate effect under sections 42 and 43 of the Licensing Act 2003.

### **30 Trade Inventory**

- 30.1 You must equip the Property with a suitable Trade Inventory as is needed to operate the Business effectively and must provide any additional items as necessary throughout the Term.
- 30.2 On the date of this Tenancy you must purchase the existing Trade Inventory for the Inventory Value calculated as at the date of this Tenancy. If you purchase the Trade Inventory from us we will still own it until you pay for it in full.

- 30.3 You must keep the Trade Inventory in a good and clean condition and repair and replace any damaged, worn out, lost or outdated items as appropriate. You must test all portable appliances each year and produce the test certificates to us.
- 30.4 You must not charge or grant any bill of sale or other security over the Trade Inventory.
- 30.5 When you vacate the Property at the end of the Term you must sell the Trade Inventory to us (or someone else that we nominate) at the Inventory Value calculated as at the end of the Term.
- 30.6 If you are in breach of your obligations to us, we may at any time decide to purchase the Trade Inventory at the Inventory Value calculated at that time, but we may deduct any debt due to us or losses that we have incurred due to your breach, before we pay any remaining balance of the price to you. You must reimburse us with any costs, losses or expenses that we incur if any third party claims against us in relation to any Trade Inventory items. Following our purchase of the Trade Inventory from you we will own the Trade Inventory but may demand that you buy it back from us within 7 days at the price that we paid or the Inventory Value at that time, whichever is the higher. If we take this action we will still be able to take action against you for a breach of your obligations.

### **31 Amusement Machines**

- 31.1 You must not bring onto the Property or operate or remove any Amusement Machines without our Consent or without obtaining all necessary Licences.
- 31.2 If we provide Consent it may be on such reasonable conditions as we wish to impose including the payment to us of the Amusement Machine Contribution.

### **32 Employees**

- 32.1 You are responsible for the employment of any staff at the Property and for all wages, PAYE, national insurance contributions, pension payments, bonuses, costs, expenses and other payments for your staff.
- 32.2 You must comply with all statutory requirements and codes of conduct in relation to your staff.
- 32.3 You must fully indemnify us in relation to any claims we may suffer from any members of your staff (either during or after expiry of this Tenancy) due to your failure to comply with your obligations to them.
- 32.4 If we ask, you must provide us with copies of the employment contracts that you have issued to your employees and all staff details including full names addresses NI numbers dates of birth rates of remuneration and work permits(if relevant).

### **33 Use of Property**

- 33.1 You must only use the Property for the Business.



- 33.2 The residential part of the Property may only be used by you, your family or your staff (as part of their contract of employment) and only in association with the Business.
- 33.3 You must not use the Property (or permit it to be used):
- 33.3.1 for any illegal, immoral or offensive purpose or for any purpose which may become a nuisance or annoyance to us or any third party;
  - 33.3.2 for any purpose which may prejudice the Licences;
  - 33.3.3 for any purpose which may be in breach of planning, licensing or other statutory requirements; or
  - 33.3.4 for any purpose which may overload the structure of the Property or which may damage the Pipes.
- 33.4 You must only use the car park for customer and staff parking for the Business or the parking of your domestic personal vehicles (but not for caravans or anything equivalent).
- 33.5 You may not locate on the Property any trading or market stalls (portable or fixed).

#### **34 Legal Obligations**

- 34.1 You must comply with all Legal Obligations affecting the Property and Business.
- 34.2 You must produce a fire risk assessment in relation to the Property and update it regularly, and you must comply with any recommendations contained in the assessment.
- 34.3 Within 7 days of receipt you must give us a copy of any notice served upon you relating to the Property or the Business relating to any Legal Obligation and, if we ask you to do so, you will join with us in making such objections or representations as we may reasonably require.
- 34.4 You must not do anything which could cause any pollution or contamination of the Property or nearby land or water and you must apply for any permission required for any discharge into the ground, atmosphere or any watercourse from the Property.
- 34.5 We do not guarantee to you that the Property may lawfully be used for the Permitted Use or the Business and it is your responsibility to obtain all necessary Licenses.

#### **35 Quality Standards**

- 35.1 You must become a member of the British Institute of Innkeepers (BII) a professional body focussed on raising the standards within licensed retail through the provision of training, professional qualifications and information.
- 35.2 You must undertake an industry recognised cellar management course within 28 days of the Term Start Date.

35.3 You must permit us at all reasonable times to enter the Property and to inspect and take samples of the stock of liquor or food, and to take account of them and to inspect the stock records.

SAMPLE

## Section 7

### Purchasing Obligations

- **The Tie**
- **Purchase of Drinks**
- **Damages**

SAMPLE

## **36 The Tie**

- 36.1 This Tenancy contains obligations upon you to buy goods exclusively from us. These obligations are intended to comply with Article 81 of the Treaty of Rome granted by EEC Regulation 2790/99.

## **37 Purchase of Drinks**

- 37.1 You must purchase from us (or, when we ask, from our Nominated Supplier) all Tied Drinks that you wish to sell from the Property, or otherwise as part of the Business.
- 37.2 You must not bring onto the Property without our Consent any Tied Drinks not purchased from us
- 37.3 You must pay us for anything supplied by us (whether or not the supply is in compliance with the terms of this Tenancy) and where anything is supplied by a Nominated Supplier then to pay us or the Nominated Supplier as we may direct for such supply payment being in accordance with our standard conditions and at the prices specified in Our Price List

### Our Supply Obligations

- 37.4 We will use reasonable endeavours to supply or produce the supply of Tied Drinks in the quantities that the Business may reasonably require and you are able to pay
- 37.5 If we are unable to supply you with any Tied Drinks for 10 consecutive working days and the lack of supply is prejudicing the Business, then when we receive your written application we will temporarily release you from your obligation to purchase those products from us until we notify you that we are able to supply (or procure the supply) of those products again. We do not need to provide this release if we have withheld these products from you because you have not performed your obligations to us.
- 37.6 We may at any time (without limitation and as often as we wish) release some or all of your obligations in clauses 36 and 37 by notice to you (a "Release Notice").
- 37.6.1 A Release Notice shall take effect on such date (not being earlier than the date of service) as it shall specify.
- 37.6.2 We may at the same time as serving a Release Notice require you (from the date the Release Notice takes effect) to stock and make a prominent display of such brands of Beers and/or Non-Beer Drinks as we shall require as if such obligation were contained in this agreement.
- 37.7 If
- 37.7.1 We give a Release Notice to you or

37.7.2 For any reason we cannot enforce your obligations under clause 37 in whole or in part or

37.7.3 We or our Nominees are required by law to vary our/their pricing structure for you subject to an exclusive purchasing obligation or

37.7.4 We are required by law to vary any of the terms of this agreement

Then by notice to you we may require review of the Rent in accordance with Appendix 3 at the date that the Release Notice takes effect or if no Release Notice has been given the date of our notice requiring the review for the purposes of such review (and any subsequent review)

- (a) The terms of this agreement which have been released or become unenforceable are to be disregarded.
- (b) The terms of this agreement which have been varied are to be taken into account in their varied form.

### **38 Damages**

- 38.1 If you breach your purchase obligations you must pay to us on demand Liquidated Damages for any drinks which you have bought or received in breach of your purchase obligations. You and we agree that this is a genuine pre-estimate of our loss attributable to your breach. Your payment of the Liquidated Damages does not mean that you are released from any of your obligations to us under this Tenancy.

## Section 8

### Our Rights

- **Our Access to the Property**
- **Our Reserved Rights**

SAMPLE

### **39 Our Access to the Property**

39.1 You must give us and anyone we authorise access to the Property for any or all of the following reasons:

39.1.1 to inspect the condition of the Property, Fixtures and Fittings and Trade Inventory and to prepare schedules of dilapidations or schedules for valuation or rent review;

39.1.2 to inspect the cellar and the stock and to take samples;

39.1.3 to inspect the papers, records, management accounts, books and VAT returns of the Business that you are required to disclose to us;

39.1.4 to comply with our Legal Obligations;

39.1.5 to check that you are performing your obligations, and to remedy any breaches of your obligations (at our discretion);

39.1.6 to carry out the Services;

39.1.7 to inspect any property nearby and carry out works to it;

39.1.8 to install and deal with any of the equipment referred to in clause 40.1.5 and to exercise any of our rights reserved in clause 40;

39.1.9 in the last 12 months of the Term (in the case of a re-letting), or at any time in the case of a sale of our interest in the Property, to view the Property and to display a sale or letting board.

Failure to allow us access for any of the reasons above will result in the costs of such failures to be recharged to and borne by you.

39.2 We will give you reasonable prior notice of our access, and our access will be while the Property is open for business unless:

39.2.1 it is an emergency situation; or

39.2.2 we have reasonable grounds to suspect that you are in breach of your obligations in which case we may break and enter if necessary.

39.3 When accessing the Property, we will take all reasonable care not to cause any damage to the Property and we will repair any damage that we cause to the Property in entering unless such entry was required as a result of your breach of obligation.

### **40 Our Reserved Rights**

40.1 We reserve the following rights over the Property for our benefit and the benefit of our successors in title, any mortgagee, the superior landlord (if any), or any other parties authorised by us:

- 40.1.1 we may enter the Property for all the purposes mentioned in clause 39 above;
- 40.1.2 we may erect and retain on or in the Property any advertisements, hoardings, signs or notices and retain any income arising out of them;
- 40.1.3 we may use any Amusement Machine on the Property for the purpose of advertising and retain any income from such advertising;
- 40.1.4 we may use or pass along any fire escapes within the Property benefiting any nearby property;
- 40.1.5 the right to install, operate, inspect, maintain, replace, substitute and upgrade any drinks dispensing equipment, Telecom Equipment and Cellar Monitoring Equipment and associated cables and equipment, and the right to connect into and use your electricity supply at your cost for these purposes. We also reserve all rights of entry and access with or without vehicles, plant, equipment, tools, appliances, scaffolding and materials for us and any Telecom Operator or the provider of the Cellar Monitoring Equipment or drinks dispensing equipment and their respective employees, agents and contractors which are required for the exercise of the rights reserved in this sub-clause
- 40.1.6 we may use the Property to provide support and protection to any nearby property, and we reserve all rights of light and air over the Property;
- 40.1.7 we may give a third party rights over the Property provided that the grant of those rights does not materially prejudice your use and occupation of the Property for the Business;
- 40.1.8 we may carry out works to alter the layout of or rebuild any nearby property and use it for any purpose and grant permission to others to do so, even if this affects the access of light and air to the Property;
- 40.1.9 we may connect into any Pipes or install new Pipes for the benefit of any nearby property; and
- 40.1.10 you are not entitled to any implied rights and s.62 Law of Property Act 1925 is excluded.
- 40.2 We reserve the rights of access to the administration privileges of all social media accounts including (but not limited to) Facebook, Twitter, Instagram for our benefit and the benefit of our successors in title, or any other parties authorised by us.



## **Section 9**

### **Ending this Tenancy**

- **Your right to end the Tenancy**
- **Our right to end the Tenancy**
- **What you have to do at the end of the Tenancy**
- **No Compensation**

## **41 Your right to end the Tenancy**

- 41.1 You may end this Tenancy by giving us written notice on the sixth, twelfth, eighteenth, twenty fourth, thirtieth, thirty sixth, forty second, forty eighth and fifty fourth month anniversary of the Term Start Date and this Tenancy will end on a date not less than six calendar months after we receive your notice.
- 41.2 You may only bring this Tenancy to an end under this clause if you are up to date with your payments to us and are not in material breach of any of your obligations to us, both at the time that you serve the notice and upon the expiry of the notice.

## **42 Our right to end the Tenancy**

- 42.1 We may end this Tenancy by giving you written notice and this Tenancy will end on a date not less than six calendar months after notice has been served.
- 42.2 We may end this Tenancy by re-entry or proceedings if:
  - 42.2.1 you do not pay any Rents within seven days of them becoming due (even if not formally demanded);
  - 42.2.2 you do not comply with any of your obligations under this Tenancy;
  - 42.2.3 you become Insolvent;
  - 42.2.4 if the Premises Licence is surrendered, suspended or revoked or a closure order issued or you are disqualified from holding any Licences, are convicted of any relevant offences (as defined in the Licensing Act 2003), or you prejudice the continuance of any of the Licences;
  - 42.2.5 you are in breach of any additional grounds for re-entry contained in any Superior Tenancy; or
  - 42.2.6 if you (or any one of you) dies.

## **43 What you have to do at the end of the Tenancy**

- 43.1 At the end of this Tenancy you must:
  - 43.1.1 vacate the Property and leave it free from any charges and in a state of repair and decoration that is no worse than when you took occupation of the Property with the Trade Inventory on site and in good condition and free of charge;
  - 43.1.2 reinstate any alterations that we have requested you to reinstate (repairing any damage caused);
  - 43.1.3 ensure that all Rents and any other payments due to us or any third party are paid up to date;

- 43.1.4 deliver to us the original signed tenancy;
- 43.1.5 transfer the Premises Licence in accordance with clause 29.8
- 43.1.6 Deliver to us the full access to all social media accounts operated by you as part of the business operated at the Property.
- 43.1.7 Pass to us the telecommunication lines with service uninterrupted and the telephone numbers unchanged.
- 43.2 If you do not comply with these obligations you must pay us any costs and expenses we incur in performing the obligations for you and we may deduct these costs and expenses (or a proportion of them) from the Deposit.
- 43.3 The end of the Tenancy will not prevent you or us making any claims against each other in relation to any breach of obligation in this Tenancy.

#### **44 No Compensation**

- 44.1 Unless contrary to Legal Obligation you will not be entitled to any compensation under any statute at the end of this Tenancy.

**Section 10**

**Guarantee Obligations**

- **Guarantor's Obligations**

SAMPLE

**45 Your Guarantor agrees to comply with these Obligations**

- 45.1 to indemnify us against all losses incurred as a result of any failure by you to comply with the terms of this Tenancy during the Term and if we give you extra time to comply with any of the obligations of this Tenancy or do not insist upon their strict observance this agreement remains fully effective
- 45.2 to accept a new agreement from us if before the end of the Term this Tenancy ends prematurely provided that we require you by giving you notice within 3 months (time being of the essence) of the date on which this Tenancy ends prematurely (“the Disclaimer Date”)
- 45.3 the term of such new tenancy shall be for the period from the Disclaimer Date to the end of the Term and shall be in the form of this Tenancy as they apply at the Disclaimer Date omitting any provision for the guarantee of the Tenant’s obligations and any reference to any obligation which was completely performed before the Disclaimer Date
- 45.4 to pay us our costs reasonably incurred in preparing and granting any new tenancy

## Section 11

### Understanding the Tenancy

- **Definitions**
- **Interpreting the Tenancy**
- **Notices**
- **Release of Information**
- **Arbitration**

## 46 Definitions

In this Tenancy the following terms have these meanings:

46.1 “**Amusement Machines**” means:

46.1.1 any mechanical, electrical or electronic machine, quiz machine, video machine or other amusement or gaming machine;

46.1.2 all sound or audio visual production machines;

46.1.3 any other machine, device or apparatus for playing any game of amusement, skill or chance (including table games such as pool, table football etc); or

46.1.4 any terminal or any software associated with the operation of any such machine, device or apparatus

irrespective of whether such machines provide prizes or not and irrespective of whether payment is by way of money tokens or otherwise, but excluding any machine, device or terminal which is exclusively for domestic use in any private living accommodation at the Property.

46.2 “**Amusement Machine Contribution**” means a share of the net income from Amusement Machines and we will notify you in writing from time to time of the proportion to be paid to us.

46.3 “**Base Rate**” means the base rate from time to time of any UK clearing bank we may choose from time to time.

46.4 “**Beer**” means beer of any type or description including lagers and stouts.

46.5 “**Business**” means the business conducted from the Property for the retail sale of alcoholic and non-alcoholic drinks, refreshment and food for consumption on and off the Property with or without ancillary bed and breakfast and any other ancillary uses approved by us and authorised by a planning permission.

46.6 “**Cellar Monitoring Equipment**” means drinks flow measuring equipment installed at the Property either now or later together with all associated cables and equipment necessary to operate it.

46.7 “**Composite Barrel**” means 36 imperial gallons of draught Beer or cider or 140 litres of packaged Beer cider or RTDs (where packaged means a container of less than 3 litres and RTDs are also known as alcopops and or flavoured alcoholic beverage) or 100 Litres of wine or 50 litres of spirits or 300 litres of packaged minerals.

46.8 “**Consent**” means our prior permission to be given in writing which we do not need to give or may give with conditions.

46.9 “**Deposit**” means the amount that we are holding under clause 6.

46.10 “**Designated Premises Supervisor**” shall have the meaning attributed to it under the Licensing Act 2003.

- 46.11 **“Drinks”** means all beverages except tap water and milk.
- 46.12 **“Fixtures and Fittings”** means all fixtures, fittings, plant, machinery and equipment in or on the Property from time to time including boilers, Pipes, and equipment relating to heating, ventilation and air conditioning, sanitary ware, cellar cooling system, pumps, sewerage systems and tanks, sprinkler systems, electrical and gas installations (except portable equipment), wall and floor coverings, external lighting and signage, lifts and hoists, bar server, back fittings, and any other fixtures fittings or equipment in or on the Property which do not form part of the Trade Inventory and are generally known as landlord’s fixtures.
- 46.13 **“Independent Expert”** means a qualified surveyor experienced in the licensed trade who shall be appointed by agreement or in default of agreement by the president of the Royal Institution Chartered Surveyors on application by either you or us which surveyor shall act an expert and shall give directions as to how the referral is to be dealt with.
- 46.14 **“Index”** means the All Items Index of Retail Prices published by the Office of National Statistics or any other appropriate index which we use to replace the Index if it ceases to exist.
- 46.15 **“Insolvent”** means:
- 46.15.1 in the case of an individual, if a receiver or trustee in bankruptcy is appointed;
- 46.15.2 in the case of a company or partnership, if a receiver, liquidator or administrator is appointed (but not a voluntary liquidation by a solvent company except in relation to your obligations to hold and protect the Premises Licence in which case a solvent liquidation shall apply) or a statutory moratorium applies to it;  
and
- 46.15.3 in all cases:
- where the company or individual enters into a voluntary arrangement with creditors; or
  - allows possession to be taken of goods (including stock or Trade Inventory) at the Property.
- 46.16 **“Insurance Rent”** means the fair proportion which we apportion to the Property to cover the sum that we incur:
- 46.16.1 in complying with our obligation in clause 20; and
- 46.16.2 in insuring in such amounts as we consider appropriate against liability to you and/or third parties in connection with the Property and/or the Business.
- 46.17 **“Insured Risks”** means:
- 46.17.1 loss or damage by fire, lightning, explosion, aircraft (including articles falling or dropped from aircraft), riot, civil commotion, malicious persons, earthquake, storm, tempest, flood, bursting and over-flowing of water pipes tanks and



other apparatus and impact by road and/or other vehicles and such other risks as we choose to insure against;

- 46.17.2 loss of rent for a reasonable period (including an estimate for future rent reviews);
- 46.17.3 the cost of demolition, site clearance, the removal and disposal of debris and architects' surveyors' and other professional fees and other expenses that we consider necessary for rebuilding or reinstating.
- 46.18 **"Interest"** means interest at 5% above the Base Rate (both before and after judgment) calculated on a daily basis from 7 days after the payment becomes due to the date on which payment is made.
- 46.19 **"Interim Review Notice"** means a notice that we may serve on you under clause 12 requiring a rent review.
- 46.20 **"Inventory Value"** means the value of the Trade Inventory to the Business that is agreed between the buying and selling parties, assuming that the buyer is simultaneously purchasing an interest in the Business the price to be determined in the manner usual in the licensed trade as between incoming and outgoing tenants. If the parties cannot agree upon a value, the price shall be determined by a single licensed trade valuer acting as an arbitrator and if the parties cannot agree on the appointment of an arbitrator then either party may request the president of the Association of Valuers of Licensed Property to appoint one
- 46.21 **"Illicit Container"** means a container found at the Property containing or having contained or purporting to have contained Tied Drinks not purchased from us
- 46.22 **"Illicit Volume"** means the amount of Tied Drinks by volume dispensed at the Property but not purchased from us as measured by an electronic dispense information system
- 46.23 **"Legal Obligation"** means any obligations relating to the Business, the Property, its occupation or use which are imposed by any existing or future statute, statutory instrument, regulation, industry code of practice, order, notice or the requirements of any competent authority or court.
- 46.24 **"Licences"** means all licences, permissions, certificates and consents required for the Business to be lawfully conducted from the Property including a Premises Licence and Personal Licences for those conducting Licensable Activities at the Property, all consents required for Amusement Machines and any other licences, permissions, certificates and consents which we believe are necessary for the Business.
- 46.25 **"Licensable Activity"** shall have the meaning attributed to it by the Licensing Act 2003.
- 46.26 **"Licensing Authority"** means the authority responsible for issuing Licences in the area in which the Property is located.

46.27 **“Liquidated Damages”** means the amount calculated by the following formula or fraction:

$$\frac{\text{The Damages Multiplier} \times \text{the volume of the Illicit Container}}{\text{the relevant Composite Barrel}}$$

**Or where relevant;**

$$\frac{\text{The Damages Multiplier} \times \text{the volume of the Illicit Volume}}{\text{the relevant Composite Barrel}}$$

- 46.28 **“Main Structure”** means the foundations, floor structure, load bearing walls and columns, steel frames, chimneys and roof, but excluding windows, doors and their frames.
- 46.29 **“Manager”** means a suitably qualified and experienced person who is a Personal Licence holder and can manage the Business and whom we have given Consent to be such person
- 46.30 **“Nominated Supplier(s)”** means one or more third party suppliers nominated by us.
- 46.31 **“Notice Date”** means the date we serve an Interim Review Notice on you under clause 12.
- 46.32 **“Our Price List”** means our current price list (or the current price list of any of our Nominated Suppliers) or any updated versions which we supply to you.
- 46.33 **“Personal Licence”** means a personal licence (as defined by the Licensing Act 2003).
- 46.34 **“Pipes”** means any sewers, vents, drains, pipes, wires, cables, ducts, gutters, down pipes, fibres and any other conducting media including ancillary plant and equipment which are in over or under the Property now or at any time during the Term.
- 46.35 **“Premises Licence”** means a premises licence (as defined under the Licensing Act 2003) relating to the Property.
- 46.36 **“President”** means the President of the Royal Institution of Chartered Surveyors or his acting deputy.
- 46.37 **“Property”** means the whole of the land and buildings (or any part of it) described in the Tenancy Particulars including all additions, improvements, Fixtures and Fittings, outbuildings, boundary features, access ways, gardens, car parks, play grounds and built upon areas but excluding the airspace above the land and buildings.
- 46.38 **“Release Notice”** means a notice that we serve on you under clause 36 releasing the tie in relation to certain Drinks specified in that notice.

- 46.39 “**Rents**” means the sums referred to in the Tenancy Particulars and any other sum payable to us under the terms of this Tenancy.
- 46.40 “**Repair and Maintenance Guide**” means out guide to the repair and maintenance of the Property as published from time to time the current version being attached in Appendix 1.
- 46.41 “**Services**” means the services set out in clause 15
- 46.42 “**Starting Deposit**” the amount set out in the Tenancy Particulars.
- 46.43 “**Superior Lease**” means any lease of the Property (or part of it) which is superior to this tenancy and any landlord under a Superior Lease shall be referred to as the **Superior Landlord**.
- 46.44 “**Telecom Equipment**” means telecom apparatus as defined in the Electronic Communications Act 2000 and may include microcellular antenna dishes, masts, cabinets, cables, ducts and power supplies, as required by the Telecom Operator, plus any replacement, renewal or upgrading of the apparatus, and ancillary equipment.
- 46.45 “**Telecom Operator**” means any person, company or body providing or procuring the provision of any telecommunication services or facilities.
- 46.46 “**Tenancy Particulars**” means the summary of the main points of this Tenancy
- 46.47 “**Term Start Date**” as set out in the Tenancy Particulars.
- 46.48 “**Tied Drinks**” means all Drinks on Our Price List, and in default all Drinks
- 46.49 “**Trade Inventory**” all trade fittings, furniture and equipment which do not form part of the Fixtures and Fittings and other portable items on the Property for use in connection with the Business, including any items that you add to the Trade Inventory during the Term.
- 46.50 “**Trading Hours**” the hours during which we reasonably believe the Property should be open for trade and defined on the premises licence, and we will notify to you of these from time to time. We will only ask you to trade during hours permitted by the Premises Licence.
- 46.51 “**VAT**” means Value Added Tax or other tax of a similar nature.

## **47 Interpreting the Tenancy**

When interpreting this Tenancy the following points apply:

- 47.1 if 'you' or 'we' includes more than one person or company, that person's obligations may be enforced jointly or individually;
- 47.2 any reference to "we", "us" or "our" includes our agents employees nominees and successors in title;
- 47.3 words implying one gender include every gender and words implying the singular include the plural and vice versa and words implying persons include firms, companies and corporations and vice versa;
- 47.4 where you agree not to do something this includes an obligation upon you not to allow that thing to be done or omitted to be done;
- 47.5 where we agree to do something or have a right to do something we can ask someone else to do it on our behalf;
- 47.6 if the consent of our mortgagee (if any) or Superior Landlord is required to enable us to grant a Consent to you, we will try to obtain the Consent if you pay the costs, but we will not grant Consent to you until the mortgagee's and/or Superior Landlord's unconditional consent has been obtained as required;
- 47.7 where we refer to a statute it includes any changes affecting it, and any regulations, instruments, orders, rules, notes or directions issued in relation to that statute;
- 47.8 where we refer to the end of the Term or the end, expiry or determination of this Tenancy it includes determination of this Tenancy by any method;
- 47.9 the word "including" does not imply any limitation in any way;
- 47.10 where this Tenancy says that we "may" do something, it will be at our option whether we choose to do that act and we will not be obliged to do it;
- 47.11 any reference in this Tenancy to "your obligations" refers to your obligations to us under the terms of this Tenancy or any side letters or other agreements that you have entered into with us;
- 47.12 the Schedule forms part of this Tenancy and we and you agree to perform our obligations and be bound by the matters contained in the Schedule; and
- 47.13 no third party is entitled to any rights under this Tenancy under the Contracts (Rights of Third Parties) Act 1999.

## **48 Notices**

- 48.1 Any notice must be served upon us at our registered office by recorded delivery.

- 48.2 We may serve a notice upon you or the Guarantor either by sending it by special delivery to the address that you last notified to us in writing, or by us leaving it at the Property.
- 48.3 If you or the Guarantor comprise more than one individual, it will be sufficient for us to serve notice on one of those individuals.

#### **49 Release of Information**

- 49.1 You agree to us releasing relevant information about you to appropriate competent authorities if we are asked to do so.

#### **50 Arbitration**

- 50.1 Where it says that any matter should be referred to arbitration it will be decided upon by an arbitrator under the Arbitration Act 1996. The arbitrator must be experienced in the licensed property industry. If we cannot agree jointly on the identity of the arbitrator either of us may apply to the President of the Royal Institution of Chartered Surveyors to decide. The arbitrator will decide who will be responsible for costs.

## **Appendix 1: The Repair and Maintenance Guide**

### **Tenancy Agreement**

<b>Tenant's Responsibility for Repair</b>	<b>Tenants to Carry out the following repairs</b>
Boiler & Central Heating	To maintain and repair boiler, pipe work, radiators, pumps, valves and associated fittings. Obtain insurance cover for the boiler
Catering Equipment	All cleaning, maintenance and annual safety checks of all catering equipment
Cellar Cooling	To repair, service, maintain & replace parts as necessary
Cess Pools, Septic Tanks & Treatment Plants	To maintain and empty on a regular basis (at least twice a year) and supply landlord with written confirmation
Doors – External	External door locks and external door closers
Doors – Internal	Door, Frames, Hinges, Locks, Handles & Closers
Drains & Sanitary Fittings	To clean, maintain and keep free flowing and carry out initial investigations of problems
Electrical Fittings	Supply all light fittings, replacement of all lamps, carry out PAT testing & maintain all loose equipment
External Decoration	Out buildings and garden furniture belonging to the tenant i.e. sheds, fences, etc
Extractor Fans	To repair or replace if beyond economical repair
Floor Covering	All applied floor coverings e.g., carpets, sheet flooring, vinyl tiles, paints, etc.
Garden	Maintain garden excluding mature trees
Glass	Replacement of all damaged glass including putty & decoration
Grease Traps & Dosing Systems	To maintain & empty on a regular basis
Gutters & Downpipes	Cleaning of all debris and unlocking down pipes to keep free flowing. Report if found to be defective
Internal Decoration	All internal surfaces including filling of holes in plaster and joinery
Joinery	To maintain the architrave & skirting boards, etc
Kitchen Extractor	Regularly clean all filters, fans, ducting internal & external. To repair. Replace if beyond economical repair
Pests	Eradication and control of all vermin and pest infestation
Plumbing	All pipes/wastes fittings inc, wastes that carry liquids/substance to and from sanitary ware ect.
Sanitary ware & Taps	Repair all damage (or replace as necessary) to urinals WC pans hand basins and cisterns internal working of cisterns taps baths and showers. Clean & free blockages to wastes.
Sump Pump	Clean and regularly maintain sump pump and associated fittings. Repair and replace sump pump as necessary. Keep sump holes free of obstructions or debris which could cause damage or breakdown to sump pump. Maintain sump cover
Wall Tiles	Replacement of all wall tiles
Window Furniture	Repair & replace catches & locks
Yards & Internal Fencing	Keep clean and maintain yard. Maintenance, repair and replacement of all internal fencing

## **Appendix 1: The Repair and Maintenance Guide (Continued)**

### **Tenancy Agreement**

<b>Brakspear Responsibility for Repair</b>	<b>Brakspear will Carry out the following repair or replacement</b>
Annual Building Inspection	Instruct regular inspection and report
Boiler & Central Heating	Instruct regular inspection and report. Replacement of boiler if beyond economical repair
Boundary Fencing	Fence panels damaged by weather conditions and rot
Car Park – Structural	Preparation and relaying, if hard surface, such as tarmac/concrete. To supply only suitable size topping to lose shingled car park in order to make up levels, which tenants will be responsible for spreading
Ceiling Structure	Repair/replace to include lath & plaster, plaster board ceilings, other coverings, plaster and paint/decorate, if previously painted. Does not include papering or decorative damage & its effects
Chimney Structure	All associated structural members that make up a chimney
Doors – External	Doors, Frames & Hinges
Drains – Structural	Instruct regular inspection and report. Structural repairs that may be deemed necessary
Electrics – part 1	All electrical cables & wiring but not additional tenants wiring or fittings unless paid for by the tenant
Electrics – part 2	Instruct regular inspection and report on all smoke detection equipment, fire alarms, emergency lighting, control panels and wiring
Electrics – part 3	Periodic test & report
External decoration	Redecoration of all external painted surfaces on main building, swing sign posts and out buildings belonging to Brakspear
Floors	Floor boards, joists, floor tiles/stone and cellar screeds due to fair wear & tear (not coverings)
Gutters & Downpipes	Damaged or leaking gutters and down pipes
Joinery	Rotting or loose window frames, external doors and frames and staircases
Principal Branding – signage	Due to deterioration by time or weather conditions
Roof Structure & Coverings	All elements of structural members that make up any pitched or flat roof to include all coverings and associated flashings and weathering's
Thatched Roofs	Instruct regular inspection and report
Walls & Structural Plaster	All structural members including plaster finish of wall and paint where previously painted. Not decorative/minor damage or papering
Window Furniture	Maintain sash cords

## **RECHARGES**

<b>5 Year Tenancy Agreement</b>	
Air Management Equipment	Inspection, maintain & service including parts
Boiler Service and annual Gas Safety inspection	Inspection, maintain & service including parts
Fire Alarms annual, Lighting and Alarm Test	Inspection, maintain & service including parts
Cellar Cooling Equipment annual service	Inspection, maintain & service including parts
Lifts (4 per year) & Hoists (2) service and inspect	Inspection, maintain & service including parts
Chimney Sweeping (per Chimney)	Minimum twice a year
Chimney Fan (if fitted) service and inspect	Inspection, maintain & service including parts
Clean Kitchen Extraction and annual inspection	Inspect and clean
Thatch Roof inspection (if applicable)	Inspect & report every 3 years 1/3 accrual – if required
Property Condition Survey – annually	Inspect & report
Fire Fighting equipment (where owned by Brakspear)	Inspection, maintain & service including parts
Annual Drainage inspection – including internal & external pipe work	Inspect & report
Mechanical Effluent Treatment Plants (if fitted)	Inspection, maintain & service (4 visits) including parts
Annual Licensing Fee from Local Council	Annual charge
Rateable Value – Late night levy	As required
Property Insurance Premium (including IPT)	Annual charge

**Additional call outs to the service contracts will be recharged separately**



## Appendix 2: The Service Charge

<b>Service Provision by Landlord</b>	<b>Mandatory/O ptional</b>	<b>Annual Charge (£)</b>
Annual service of Air Management Equipment	Mandatory	£
Annual gas safety inspection and boiler service	Mandatory	£
Annual check of emergency lighting and fire alarm testing	Mandatory	£
Annual service of cellar cooling systems	Mandatory	£
Annual CPL licence fee	Mandatory	£
Service of food lifts & hoists within the property (4 Visits)	Mandatory	£
Service of Cellar Hoist if installed (2 Visits)		£
Chimney Sweeping (Twice per year, per chimney)	Mandatory	£
Chimney fan servicing (if fitted/per fan)	Mandatory	£
Annual kitchen extraction equipment cleaning per 4 meters, (extra charge per meter)	Mandatory	£
Thatch inspection and reports, every 3 years 1/3 accrual – if required	Mandatory	£
Property condition surveys	Mandatory	£
Annual drainage inspection – including Internal & External pipe work	Mandatory	£
Fire fighting equipment service (if Company Owned) – Flat fee + charge per item	Mandatory	£
Service of Mechanical effluent treatment plants (if fitted) 4 visits plus parts	Mandatory	£
Annual Reputation.com subscription	Mandatory	£
Annual Licensing Fee from local Council	Mandatory	£
PAT Tests	Mandatory	£
FRA Fire Risk Assessments	Mandatory	£
Rateable Value	Late Night Levy	£
Property Insurance premium (including IPT)	Mandatory	£
	Total Charge	£
Combined monthly charge 1/12 of insurance and service		£

### **Appendix 3: Review of the Rent**

- 1 From the date on which a Release Notice or any notice under clause 37 takes effect the Rent will be reviewed to Market Rent or if higher the Rent as reviewed in accordance with clause 3.
- 2 The expression "Market Rent" means the best annual rent that could reasonably be obtained at the date on which a Release Notice or any notice under clause 37 takes effect.
  - 2.1 by a willing landlord from a reasonable willing tenant
    - 2.1.1 for the Property in the open market on a tenancy for the residue of the Term
  - 2.2 at the rate applicable after any rent free or reduced rent period which might be allowed for any reason by the willing landlord to the willing tenant on the following assumptions
    - 2.2.1 that other than as specified in this Appendix the tenancy is on the same terms as this agreement as amended (if it be the case) by any agreed variations and/or by any release made by the us pursuant to section 37
    - 2.2.2 that the willing tenant will receive the benefit of any inducement which it may then be the practice of a willing landlord to give to a willing tenant in the open market
    - 2.2.3 that all obligations under this agreement have been complied with
    - 2.2.4 that the Property has been and is continuously trading is fit and ready for immediate occupation and use and that the tenant has no fitting out costs and has the use of the Trade Inventory
    - 2.2.5 that the Business is being conducted from the Property by an average competent tenant
    - 2.2.6 that no work has been carried out to the Property that would reduce the rental value and if the Property has been damaged that such damage has been made good.
    - 2.2.7 that the Licences are in force without adverse conditions
    - 2.2.8 that no premium has been paid by the willing tenant for the grant of the lease
    - 2.2.9 that VAT is only chargeable upon 90% (or such other percentage as shall from time to time be advised by H M Revenue & Customs as being applicable to premises such as the Property which include both commercial accommodation and residential accommodation) of the Rent to reflect that element of the Property which represents commercial accommodation (no VAT being charged on the residential elements of the Premises).

But disregarding

2.2.10 Any effect on the rent of your occupation of the Property; and

2.2.11 Any additional goodwill attaching to the Property attributable to you having achieved a greater level of business than an average competent tenant; and

2.2.12 Any increase in value attributable to improvements that you have carried out at your expense and with our written permission (unless we required you to carry out the works)

### 3 .

3.1 The Market Rent may be agreed at any time

3.2 If we and you do not reach agreement the open market rent may be determined by an independent chartered surveyor having current experience of rental values or property of a like kind and character to the Property and appointed jointly in writing within 3 months of the date that the Release Notice or any notice under clause 37 takes affect but if such appointment is not made may apply at any time to the President (or his nominee) of the Royal Institution of Chartered Surveyors (or such other comparable body as the Landlord shall reasonably choose) to appoint such a surveyor.

3.3 Such surveyor will be appointed as an expert and:

3.3.1 He will give notice to us and you inviting each to submit to him within such time as he stipulates a proposal for the open market rent which be supported by the submission of reasons and/or a professional valuation or report.

3.3.2 He will afford to us and you an opportunity to make counter-submissions in respect of any such submission valuation or report.

3.3.3 He will give written reasons for his decisions.

3.3.4 His fees and the costs of appointing him will be borne and paid by us and you in such shares and in such manner as he decides or failing such decision in equal shares.

4 If the additional review of the Rent is not agreed or determined within 3 months of the date of the Release Notice or the date of our notice requiring the review you shall continue to pay the Rent at the rate previously payable and when the additional rent has been agreed or determined:-

- 4.1 If the additional rent exceeds the Rent previously payable you will pay on demand the excess for the period from the date that Release Notice or any notice under clause 37 until the first day for payment of the Rent after the additional Rent has been agreed or determined together with interest (at Lloyds TSB Plc base rate) on the excess.
- 4.2 If the additional Rent is less than the Rent previously payable the overpayment for the period from the relevant date of the Release Notice or the date of our notice requiring the review the first day for payment of the additional Rent has been agreed or determined together with interest (at Lloyds TSB Plc base rate) on the excess from the relevant Rent Review Date will be allowed by us to you as a credit against Rent to become due.
- 5 If at date of the Release Notice or the date of our notice requiring the review the law restricts our right to review the Rent or recover any increased rent we shall when such restriction is lifted by giving not less than one month's notice to you be entitled to an additional review of the Rent in accordance with this Appendix.

**Signature page for counterpart tenancy**

**EXECUTED** as a Deed by the Tenant: ] .....

**Tenant**

in the presence of:-

Witness

Signature: ] .....

Full Name: ] .....

Address: ] .....

Occupation: ] .....

Or; ] .....

**EXECUTED** as a Deed on behalf of the ] .....

Tenant by a Director **Director**

In the presence of:-

Witness

Signature: ] .....

Full Name: ] .....

Address: ] .....

Occupation: ] .....

**EXECUTED** as a Deed by the Guarantor ] .....  
**Guarantor**

in the presence of:-

Witness

Signature: ] .....

Full Name: ] .....

Address: ] .....

Occupation: ] .....

**EXECUTED** as a Deed by the Landlord acting through a Director:-

.....  
**David Nathan - Director**