Code 009

Exclusive Sale Authority: Sale of Business ©

Chandler REAL ESTATE & Co.

The Real Estate Institute of Victoria Ltd | www.reiv.com.au | ABN 81 004 210 897 |

Freehold real estate

If as well as the sale of a business the Vendor is appointing the Agent to sell freehold real estate an Exclusive Sale Authority Code 002 should be completed in addition to Exclusive Authority: Sale of Business.

The Agent named in Schedule Item 1 is exclusively appointed by the Vendor named in Schedule Item 2 as the Vendor's agent to endeavour to sell the Vendor's business described in Schedule Item 3. The appointment is made by the Vendor and accepted by the Agent on terms set out in this Authority.

Schedule

Item 1 Agent Details

Agent **Chandler and Co Real Estate** Attention **Sharyn Chandler**

Address **1689 Burwood Hwy BELGRAVE, VIC 3160**

ACN _____ ABN **59149199244**

Phone **03 9754 6888** Mobile _____

Fax **03 9754 4955** Email **office@chandlerandco.com.au**

Item 2 Vendor Details

Vendor LY HUYNH & MINH CHI HUYNH

Address .

ACN _____ ABN _____

Phone _____ Mobile _____

Email _____

Item 3 Vendor's Business

Name JADE VALLEY RESTAURANT

Address **UNIT 9/1647-1649 Burwood Hwy, Belgrave VIC 3160**

ABN _____ ACN _____

Type of business **restaurant**

Chattels included* **kitchen equipment, tables, chairs**
(*If space is insufficient attach a list signed by the Vendor to each copy of the authority)

Item 4 Exclusive Authority Period is:

60 days beginning on and including **02/04/2024**

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Item 5 Authorised Price for the sale of the Vendor's business:

Authorised Price: **$50,000.00** or the price in a contract of sale signed by the Vendor, plus agreed stock at valuation (if any).

The Authorised Price:

- [x] Includes GST
- [ ] Excludes GST
- [ ] Is not subject to GST

Item 6 GST and the Authorised Price

- [ ] The sale of the Vendor's business will or may result in the Vendor making a taxable supply in accordance with the *A New Tax System (Goods and Services Tax) Act 1999*
- [ ] The sale of the Vendor's business will not result in the Vendor making a taxable supply in accordance with the *A New Tax System (Goods and Services Tax) Act 1999*
- [x] The Vendor does not know whether the sale of the Vendor's business will or may result, or will not result in the Vendor making a taxable supply in accordance with the *A New Tax System (Goods and Services Tax) Act 1999*

Item 7 Commission

A fixed *commission (including GST) of **$ 5,000.00 OR**

A *commission (including GST) being the following % of the sale price:

Dollar amount of estimated commission: $ _____ including GST of $ _____

if sold at a *GST inclusive / *GST exclusive price / *Not subject to GST of $ _____

Item 8 Marketing Expenses (including GST)

Advertising	$	700
Other Expenses	$	
TOTAL	$	700

Marketing Expenses are payable on ~~*the signing of this Authority~~ / *written request *(*delete the one that does NOT apply)*

Date of this Agreement

Signature of Agent

Name: Sharyn Chandler **Sign:** [signature] **Dated:** 2/4/24

Signature of Vendor(s)

Name: . **Sign:** [signature] **Dated:** 2.4.24.

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Particulars of Appointment

Item 1 Exclusive authority period

The Vendor appoints the Agent for the Exclusive Authority Period.

The Vendor irrevocably grants the Agent the exclusive right to sell the Vendor's business during the Exclusive Authority Period.

The Agent is authorised to sell the Vendor's business for the Authorised Price or a higher price and upon the terms of sale referred to in Schedule Item 5.

The Exclusive Authority Period ends at midnight on the final day of the nominated period.

No notice of expiry is required.

Item 2 The business

The Vendor's business that the agent will endeavour to sell is recorded in Schedule Item 3.

If the Vendor's business is sold subject to a trial period, the Vendor warrants the gross turnover of the business will not be less than *$ _____ per week during that period, inclusive of GST. (*If applicable, insert $ amount.)

Item 3 Authorised Price

The price for which the Vendor authorises the Agent to sell the business is recorded in Schedule Item 5.

Item 4 Commission

The Vendor will pay the Agent the commission recorded in Schedule Item 7, subject to the terms of this Authority.

Item 5 Agent's entitlement to receive commission

5.1 The Agent is entitled to receive the Commission if the Vendor's business is sold for the Authorised Price –

5.1.1 by the Agent or by any other person (including by way of illustration but not limited to the Vendor or another agent) during the Exclusive Authority Period; or

5.1.2 to a person Introduced to the business by the Agent within the Exclusive Authority Period and to whom, as a result of the introduction, the business is sold after the expiry of the Exclusive Authority Period.

5.2 The Agent will not be entitled to receive commission if the business is sold in accordance with clause 5.1.2 and at the date of the sale the Vendor has incurred a liability to pay commission to another agent under the terms of an exclusive authority signed by the Vendor and dated after the expiry of the Exclusive Authority Period.

5.3 The Commission the Agent is entitled to receive is due and payable by the Vendor to the Agent on the date the business is sold in accordance with the terms of this Authority.

Item 6 Marketing Expenses

6.1 The Vendor authorises the Agent to incur the Marketing Expenses recorded in Schedule Item 8.

6.2 Any Marketing Expenses payable to the agent in addition to those recorded on Schedule Item 8 must be authorised in writing by the Vendor on this Authority or a replacement authority.

6.3 The Vendor will pay the Marketing Expenses to the Agent either on the signing of this Authority or on demand by written request, as indicated in Schedule Item 8.

6.4 The Vendor will pay the Marketing Expenses to the Agent whether or not the Agent sells the business provided that the Marketing Expenses have been incurred by the agent. If the Vendor pays Marketing Expenses to the Agent and part of those expenses are not incurred by the Agent, the Agent will refund that part of the payment that was not incurred by the Agent.

6.5 If the Agent takes any money in respect of Commission or Marketing Expenses from any money held in trust by the Agent on behalf of the Vendor, the Agent will give the Vendor written notice of the amount taken, and why it was taken, within 7 days of taking it.

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Agent notices and disclosures

Item 1. *Rebate Statement - no rebate will be received

Instructions

This statement is approved by the Director or Consumer Affairs Victoria for the purposes of section 49A(4) of the *Estate Agents Act 1980*. It may only be included in an agency authority if an agent is not entitled to any rebate. It should not be used if there is a possibility that an agent may receive a rebate.

*The agent will not be, or is not likely to be, entitled to any rebates. A rebate includes any discount, commission, or other benefit and includes non-monetary benefits.

*In addition to the statement approved by the Director of Consumer Affairs Victoria, the following statements are provided in compliance with sections 49A(4)(a) and (c) of the *Estate Agents Act 1980* -
The Agent will not be, or is not likely to be, entitled to any rebate in respect of –

(i) any Marketing Expenses (also referred to as "outgoings"); or

(ii) any prepayments made by any person engaging or appointing the Agent (the ***client***) in respect of any intended expenditure by the Agent on the client's behalf; or

(iii) any prepayments made by the client to another person in respect of the work.

The Agent is not entitled to retain any rebate and must not charge the client an amount for any expenses that is more than the cost of those expenses.

(*If the Agent will be or is likely to be, entitled to a rebate then the Agent must cross out this item, the amendment should be initialled by the parties to this agreement and the Agent is to complete the rebate statement approved by the Director of Consumer Affairs Victoria for use where a rebate will be, or is likely to be, received. The approved rebate statement must be attached to the original and the client's copy of this Authority at the time that it is signed. The rebate statement is available at https://www.consumer.vic.gov.au).

Item 2. Sharing of commission
*The Agent may share commission with an employee who is an estate agent or agent's representative or with an estate agent who is the Agent's business partner. *(*If commission will be shared with anyone else, complete the notice of commission sharing approved by the Director of Consumer Affairs, at the time of signing this Authority. The notice can be downloaded at www.consumer.vic.gov.au. The notice must be provided to the Vendor before the Authority is signed. Attach a copy of the notice to each copy of the Authority.)*

If during the Exclusive Authority Period the Agent wishes to share commission payable by the Vendor with another agent or person to facilitate the sale of the business and has not previously provided a commission sharing declaration, the Vendor agrees the agent may do so and agrees to promptly sign another authority on the same terms and conditions as this Authority, including an end date to the Exclusive Authority Period the same as it is on this Authority.

Item 3 Default Authority Period
If an agreement stating that an estate agent is to act as the sole agent for the sale of any real estate or business does not state when the sole agency is to end, the sole agency ends – (a) in the case of a sale by auction, 30 days after the date of the auction; (b) in any other case, 60 days after the date the agreement is signed by, or on behalf of, the seller of the real estate or business.

Item 4. Dispute resolution
The Agent advises the Vendor that the Agent has procedures for resolving complaints and disputes arising from the operation of the Agent's estate agency practice. If a complaint or dispute arises, please ask to be informed about the procedures.

Item 5. Making a complaint
Any complaint relating to commission or outgoings can be made to the Director, Consumer Affairs Victoria, GPO Box 4567, Melbourne VIC 3001 or by telephoning 1300 73 70 30.

Unless there are exceptional circumstances, Consumer Affairs Victoria cannot deal with any dispute concerning commission or outgoings unless it is given notice of the dispute within 28 days of the client receiving an account for or notice that the agent has taken the amount in dispute, whichever is later.

Item 6. Warranty of REIV membership
The Agent is a member of the REIV, at the date of this Authority. The Agent will confirm membership, if requested. If the warranty is false, this Authority is void. *(This warranty cannot be deleted or modified)*

Item 7. Warranty of VicForms subscription
The Agent has an active REIV VicForms subscription, at the date of this authority. The Agent will confirm their VicForms subscription, if requested. If no active subscription is found, this authority is void.

Item 8. GST and the Authorised Price

8.1 If the Vendor will or may make a taxable supply, the Agent is not obliged to advertise or market the business until accurately advised whether the Vendor's Authorised Price is inclusive or exclusive of goods and services tax ("GST").

8.2 If the Vendor will or may make a taxable supply, in advertising and marketing the business the Agent will indicate whether the Vendor's authorised price is inclusive of GST or whether GST is or may be payable by a Purchaser in addition to the Vendor's Authorised Price.

Item 9. Refund of prepaid fees and expenses
If by the expiration of the Exclusive Authority Period the Agent has been paid any amount by the Vendor to which the agent is no longer entitled under the terms of this Authority, the amount will be refunded to the Vendor.

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Vendor acknowledgements

Item 1 GST and the Authorised Price

1.1 The Vendor acknowledges that on request by the Agent the Vendor will provide written advice from their accountant as to whether the sale of the Vendor's Business will or may result in the Vendor making a taxable supply in accordance with the A New Tax System (Goods and Services Tax) Act 1999.

1.2 The Vendor indemnifies and will continue to hold the Agent fully indemnified for all direct and consequential expense, loss or damage incurred by the Agent because of inaccurate GST information being provided to the Agent by the Vendor or by the Vendor's advisers. This indemnity is a continuing indemnity and will not merge on this Authority coming to an end.

Item 2 Supply of ancillary documents
The Vendor will promptly provide the Agent with complete and legible copies of licences, business registrations, permits, leases, assignments and/or renewals of leases, and security documents for chattels, equipment, fixtures, and fittings relating to the Vendor's business together with any other relevant agreements and documents.

Item 3 Supply section 52 statement where required
The Vendor will promptly provide the Agent with the statement required by section 52 of the Estate Agents Act 1980, where it is required in connection with the sale of the Vendor's business.

Item 4 Supply of contract of sale
The Vendor will instruct an Australian legal practitioner to prepare a contract of sale of a business, agree to the content of contract and execute it and advise, agree and execute other amendments or additions as may be desired or required at any time.

Item 5 Commission and Marketing Expenses subject to negotiation
The Vendor acknowledges being informed by the Agent before signing this Authority that the Commission to be paid to the Agent under this Authority and any money to be paid by the Vendor in respect of Marketing Expenses (also referred to as "outgoings") are subject to negotiation.

Item 6 Payment of Marketing Expenses
The Vendor acknowledges that the amount of Marketing Expenses listed on this Authority and incurred by the Agent must be paid irrespective of whether the business is sold.

Item 7 Agent's entitlement to lodge a caveat
The Vendor acknowledges the Agent is entitled to lodge a caveat to notify its charge for unpaid and overdue Professional Fees.

Item 8 Complaints and disputes
The Vendor acknowledges being informed before signing this Authority that the Agent has procedures for resolving complaints and disputes.

Item 9 Copy of Authority
The Vendor acknowledges receipt of a signed copy of this Authority.

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General Conditions (GC)

Item 1. Definitions
Unless inconsistent with the context

1.1 "Act" means the Estate Agents Act 1980.

1.2 "Agent" means the real estate agent or, if there is a second agent acting in conjunction with the first agent, the real estate agent named in Schedule Item 1.

1.3 "Authorised Price" is the price in Schedule Item 5.

1.4 "Authority" means this agreement.

1.5 "Binding Offer" is an offer at or above the Authorised Price which if obtained in compliance with this Authority, would if signed by the Vendor, or does, result in a contract enforceable against the purchaser of the business.

1.6 "business" has the same meaning as that in section 4 or the Estate Agents Act 1980 and includes the corporation the owner of the business.

1.7 "Commission" is the commission in Schedule Item 6, calculated as set out there.

1.8 "Deposit Monies" means any moneys which are part of the purchase price of the business paid which are paid by the Purchaser before the Purchaser completes the purchase of the business.

1.9 "Exclusive Authority Period" means the period stated in Schedule Item 4.

1.10 GST means the goods and services tax payable in accordance with the A New Tax System (Goods and Services Tax) Act 1999.

1.11 "Introduced to the business" means that a person has been made aware the business was available for purchase from whatever source.

1.12 "land" has the same meaning as that in section 4 of the Transfer of Land Act 1958.

1.13 "Marketing Expenses" are advertising and other outgoings of the Agent which the Vendor agrees to pay.

1.14 "person" includes a corporation, institution, unincorporated body, incorporated association, and any group of persons and/or any agent or associate of a person or any person appointed by the original person to take the place of the original person.

1.15 "Professional Fees" means the total of the Agent's commission, Marketing Expenses and interest (if any) payable by the Vendor to the Agent.

1.16 "Purchaser" means a person making an offer to buy the business or the person to whom the business is sold and includes their nominee or person to whom any interest in the business is transferred.

1.17 "REIV" means The Real Estate Institute of Victoria Ltd [ACN 004 210 897]

1.18 "sale" is the result of obtaining a Binding Offer and "sell" and "sold" have similar meanings.

1.19 "Vendor" means the person or persons named in Schedule Item 2.

Item 2 The use of a particular gender includes the other genders.

Item 3 The use of the singular includes the plural and vice versa

Item 4 A reference to an act of Parliament includes an act amending or superseding the Act referred to.

Item 5 If the Agent or the Vendor comprises more than one person, their respective obligations are joint and individual.

Item 6 If a part of this Authority is invalid, unenforceable, or illegal, that part must be read down to the extent necessary to ensure it is not invalid, unenforceable, or illegal and as may be reasonable so as to give valid operation so far as possible. If the part cannot be so read down, it will be deemed to be void and severable and the remaining provisions will not be in any way affected or impaired.

Item 7 Headings have been inserted throughout this Authority for ease of reference. They are not intended to limit the meaning to be given to this Authority.

Item 8 If the Vendor fails to pay the Agent any moneys due under this Authority within 14 days of receipt of the Agent's invoice ('the due date for payment') then interest at the rate fixed from time to time under section 2 of the Penalty Interest Rates Act 1983 will be charged on the unpaid money (or the balance owing from time to time) calculated from the due date for payment to and including the day on which the unpaid money is paid in full. The interest will be paid, if demanded.

Item 9 If the Vendor is a natural person, a corporation or an incorporated association, and a person signs on behalf of the Vendor, the person signing is responsible for the due performance of the Vendor's obligations as if they were the Vendor. If the Vendor is a corporation or an incorporated association, the person signing will in addition have the directors of the corporation or the committee of the incorporated association sign a guarantee and indemnity in favour of the Agent in a form acceptable to the Agent' s legal practitioner, if required by the Agent.

Item 10 The Vendor irrevocably authorises the Agent to deduct the Professional Fees properly incurred and state and federal taxes required to be deducted by law, including GST from deposit moneys held by the agent once the requirements for the release of Deposit Monies to the Vendor have been met.

Item 11 If the Agent becomes entitled to Professional Fees under the terms of this Authority the Vendor will pay the Professional Fees on demand including any state or federal taxes, including (but not limited to) any goods and services tax or other consumption tax.

Item 12 Security for payment of Professional Fees The Vendor agrees to charge all his estate or interest in land in which the Vendor has a legal or beneficial interest with the payment of the Agent's overdue and unpaid Professional Fees payable in accordance with this Authority. The charge will continue until the overdue and unpaid Professional Fees are paid.

Item 13 If Deposit Monies are held in whole or part by the Vendor' s conveyancer or legal practitioner, the Vendor appoints the Agent as the Vendor's attorney under power to direct and authorise the conveyancer or legal practitioner to pay the Agent its Professional Fees properly incurred and state and federal taxes required to be deducted by law, including GST. The Vendor agrees to promptly ratify and confirm the power of attorney, if requested.

Item 14 If this Authority requires the Vendor to pay, reimburse or contribute to an amount paid or payable by the Agent in respect of an acquisition from a third party to which the Agent is entitled to an input tax credit (as defined in the GST Legislation), the amount for payment, reimbursement or contribution will be the GST exclusive value of the acquisition by the Agent plus the GST payable in respect of that supply, but only if the Agent's recovery from the Vendor is a taxable supply under the GST Legislation.

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Item 15 On the written request of the Vendor, the Agent may sign a contract of sale which contains terms of sale agreed to by the Vendor.

Item 16 Deposit

16.1 If the Agent receives Deposit Monies they will be held by the Agent as stakeholder until the settlement of the sale of the Vendor's business.

16.2 The Agent may transfer Deposit Monies to an Australian Legal Practitioner acting for the Vendor, provided the Practitioner has previously acknowledged to the Agent in writing that the Practitioner will hold the Deposit Monies as a stakeholder until settlement of the sale of the Vendor's business. The Agent may retain from the Deposit Monies to be so transferred any Professional Fees payable to the Agent in accordance with the terms of this Authority.

16.3 At the settlement of the sale of the Vendor's business the Agent will pay the Deposit Monies to the Vendor in the Vendor's own right or as the Vendor may otherwise direct in writing, subject to deduction of Professional Fees payable to the Agent in accordance with terns of this Authority.

16.4 If the contract for the sale of the Vendor's business is rescinded by the Vendor as a result of the default of the Purchaser, the Vendor will be entitled to be paid the Deposit Monies in the Vendor's own right, subject to deduction of Professional Fees payable to the Agent in accordance with the terms of this Authority.

16.5 If the contract for the sale of the Vendor's business is rescinded by the Purchaser as a result of the default of the Vendor, the Purchaser will be entitled to the immediate refund of the Deposit Monies.

16.6 If the business is sold and no deposit is paid or the deposit is received by someone other than the Agent, the outstanding Professional Fees are due and payable by the Vendor to the Agent on demand together with any State or Commonwealth taxes required by law to be deducted, including but not limited to GST.

16.7 If there is a dispute about the entitlement of the Vendor to be paid or retain the Deposit Monies and legal proceedings are issued, the Agent may pay the Deposit Monies into the court/tribunal pending the determination or other resolution of the proceedings.

Item 17 If the sale is not enforceable against the Purchaser as a result of the Vendor's misrepresentation of the business, the Agent will be deemed to have sold the business and the Vendor will pay the Agent the Professional Fees in accordance with this Authority.

Item 18 An agreement of the Vendor and Purchaser to cancel a contract of sale or the ending of a contract of sale as a result of a default of the Vendor or Purchaser does not relieve the Vendor of the obligation to pay the Agent's Professional Fees.

Item 19 Without limiting the definition of "Introduced to the business", a person will be deemed to have been Introduced to the business by the Agent if the person became aware the business was available for purchase as a result of viewing, reading, or hearing any advertisement by whatever medium or nature referring to the availability of the business and connected to the Agent in any way.

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