

**City of Burnside**

("the Council")

and

**<NAME>**

("the Lessee")

**LEASE TO OCCUPY PREMISES**

---

BETWEEN: City of Burnside  
of 401 Greenhill Road, Tusmore SA 5065  
("the Council")

AND: The entity named in **Item 1** of the Schedule  
("the Lessee")

BACKGROUND:

- A. The Property is owned in fee simple by the Council.
- B. The Council has agreed to grant to the Lessee, and the Lessee has agreed to take, a Lease of that portion of the Property identified in Item 3 of the Schedule ("the Premises").
- C. The Lease of the Premises is granted for the purpose described in **Item 9** of the Schedule, for the Term set out in **Item 6** of the Schedule.
- D. The Lessee has carefully inspected the Premises and is satisfied that the Premises is:
  - (a) in good condition, except for any Identified Defects stated in **Item 14** of the Schedule; and
  - (b) fit for the purposes for which the Lessee intends to use it.

AGREEMENT:

**Grant of Lease**

The Council grants to the Lessee an exclusive Lease of the Premises:

- for the Lease period stated in **Item 4** of the Schedule; and
- starting on the date stated in **Item 5** of the Schedule; and
- on condition that the Lessee meets all of its obligations under this Lease.

## CONTENTS CHECKLIST

Clause No.	Description	Page No.
PART ONE - INTERPRETATION		4
1.	Interpreting this Lease	4
PART TWO - THE LESSEE'S OBLIGATIONS		5
2.	To pay rent	5
3.	To pay rates taxes and charges	6
4.	To pay other costs	6
5.	Not to sign over this Lease	6
6.	To use the Premises as intended	7
7.	To maintain	7
8.	To notify Council of accidents and hazards	8
9.	To permit Council to inspect	8
10.	To do work required by the Council	8
11.	Not to erect or alter buildings without consent	9
12.	Not to erect signs without consent	9
13.	No Leases without consent	9
14.	Not to do anything offensive or dangerous	10
15.	Not to damage neighbouring properties	10
16.	To comply with laws	10
17.	To comply with health and safety laws	10
18.	No smoking	11
19.	Lessee Governance	<b>Error! Bookmark not defined.</b>
PART THREE - THE COUNCIL'S OBLIGATIONS		11
20.	Quiet enjoyment and exclusive possession	11
PART FOUR - LIABILITY AND INSURANCE		11
21.	Lessee indemnifies Council	11
22.	Limits on Council's liability	12
23.	Insurances the Lessee must obtain	12
24.	Property insurance	13
25.	Insurance claims	13
PART FIVE - WHAT IF SOMETHING GOES WRONG?		14
26.	What if the Premises is damaged?	14
27.	What if the Lessee breaches this Lease?	14
28.	What if the Property is taken away from the Council?	15
29.	Dispute resolution	15
PART SIX - WHAT HAPPENS WHEN THE LEASE ENDS?		15
30.	Lessee must give up the Premises	15
31.	Rights preserved	16
32.	Extension of this Lease	16
33.	Holding over	16
PART SEVEN - OTHER RIGHTS AND OBLIGATIONS		17
34.	Rights of Council not limited	<b>Error! Bookmark not defined.</b>
35.	Council may do works on the Premises	17
36.	No Warranty	17
37.	Whole Agreement	17
38.	Notices	17

39.	No waiver	18
40.	Void or unenforceable terms	18
41.	Consents and approvals	18
42.	Special conditions	18
43.	Loan Agreement	18
44.	Redevelopment, asset rationalisation and demolition	18
45.	Goods and Services Tax (GST)	20

## PART ONE - INTERPRETATION

## 1 Interpreting this Lease

- 1.1 The things stated in the Background on page 1 are correct and form part of this Lease.
- 1.2 The following expressions have special meanings:
- 1.2.1 "**the Schedule**" means the Schedule at the back of this Lease.
- 1.2.2 "**the Property**" means the property described in **Item 3** of the Schedule.
- 1.2.3 "**the Premises**" means that portion of the Property being leased as described in **Item 3** of the Schedule (and identified in the map attached to the Schedule), including any buildings, structures, fences, improvements, and fixtures that:
- 1.2.3.1 form part of the Premises now; or
- 1.2.3.2 are erected during the term of this Lease.
- 1.2.4 "**the Council's workers**" and "**its workers**" include the Council's employees, agents and contractors.
- 1.2.5 "**the Lessee's visitors**" and "**its visitors**" include the Lessee's employees, agents, contractors and sub-tenants, and anybody else the Lessee lets onto the Property.
- 1.2.6 "**CPI**" means the Consumer Price Index published by the Australian Government for Adelaide (All Groups).
- 1.2.7 "**Loan Agreement**" means any agreement between the Council and the Lessee for the lending of money by the Council to the Lessee (including any such agreement that is in existence prior to the date of this Lease or that is entered into concurrently with this Lease or during the Lease period stated in **Item 4** of the Schedule).
- 1.2.8 "**RCLA**" means the *Retail and Commercial Leases Act 1995*.
- 1.2.9 "**Disclosure Statement**" means the disclosure statement given to the Lessee at the time this Lease was entered into, and if this Lease is or has been renewed, then the disclosure statement given to the Lessee in relation to the relevant Renewal Term.
- 1.2.10 "**Initial Term**" means the initial term of this Lease commencing on the Commencement Date and described in **Item 3** of the Schedule.
- 1.2.11 "**Renewal Term**" means the term of renewal or extension granted under this Lease as described in **Item 12** of the Schedule.
- 1.2.12 "**Term**" means the Initial Term, the Renewal Term(s) and any period of holding over during which the Lessee holds over or remains in occupation of the Premises.
- 1.3 A reference to a party includes that party's successors and transferees.

- 1.4 Words in the singular include the plural. Words in the plural include the singular.
- 1.5 If two or more persons are referred to in the Schedule as "the Lessee", then this Lease binds them jointly and severally.
- 1.6 The word "person" includes a body corporate.
- 1.7 A reference to any Legislation includes any modification of it or amendment to it, or any Legislation substituted for it, and all by-laws, regulations and rules issued under it.
- 1.8 Any example that is given is not meant to show all possible cases.
- 1.9 A reference to "includes" or "including" means without limitation.
- 1.10 No part of any clause in this Lease limits any other part of this Lease, unless it is expressly stipulated to do so or that is the only way it can be read.
- 1.11 The Contents Checklist and the headings of each clause are for ease of reference only. They are not to be taken into account in interpreting this Lease.
- 1.12 The Special Conditions listed in **Item 13** of the Schedule apply to this Lease and in the event of any inconsistency with the general terms and conditions in the body of this Lease, the Special Conditions will prevail.
- 1.13 If the RCLA applies to this Lease:
  - 1.13.1 this Lease must be interpreted subject to the RCLA; and
  - 1.13.2 to the extent there is any inconsistency between this Lease and the provisions of the RCLA, those provisions of the RCLA will override the terms of this Lease, including the Special Conditions contained in **Item 13** of the Schedule.
  - 1.13.3 any right, power or remedy of the Council or obligation or liability of the Lessee that is affected by the RCLA is unenforceable or void but only to the extent that it is expressly made unenforceable or void by the RCLA.

## PART TWO - THE LESSEE'S OBLIGATIONS

### 2 To pay rent

- 2.1 The Lessee must pay the annual rent stated in **Item 7** of the Schedule at the times stated in **Item 7**.
- 2.2 The annual rent will increase each year from the Rent Review Date stated in **Item 8** of the Schedule by the amount stated in the **Special Conditions** of the Schedule. This clause applies during the Initial Term of the Lease only.
- 2.3 From the commencement of the Renewal Term stated in **Item 12** of the Schedule, the annual rent will increase in proportion to the increase in the CPI in the previous twelve months. If there is no increase in the CPI, the annual rent will not change.
- 2.4 Subject to the RCLA, nothing in this Lease prevents the Council and Lessee negotiating and agreeing in writing on an alternate Rent amount to apply from a Rent Review Date.

### 3 To pay rates taxes and charges

- 3.1 The Lessee must pay (on time) all rates, taxes and charges relating to the Premises, regardless of whether such rates, taxes and charges are billed to the Lessee or to the Council.
- 3.2 The Lessee must pay (on time) all services and utilities charged to or consumed on the Premises, regardless of whether they are billed to the Lessee or the Council.  
  
(For example, the Lessee must pay, as applicable, for telephone, gas, electricity and water.)
- 3.3 The Lessee must pay (on time) all costs associated with the removal of waste from the Premises, including cardboard waste, notwithstanding these costs may be billed to the Council.
- 3.4 If any of the operating expenses in connection with the Premises are not specifically referable to, or separately assessed or charged in respect of the Premises (for example, cleaning and security costs), then the Lessee must pay the Lessee's share of any such expenses at a rate identified by the Council.
- 3.5 Rates, taxes and charges relating to the Premises must be adjusted between the Council and the Lessee as at the Commencement Date and the end or termination date of this Lease.

### 4 To pay other costs

- 4.1 Council and the Lessee will each bear their own costs in relation to the negotiation of this Lease and will pay one-half each of the cost of preparing this Lease.
- 4.2 The Lessee must comply with all its obligations in this Lease at its own cost.
- 4.3 The Lessee must pay costs relating to the different types of insurance policies that have to be taken out under this Lease. These obligations are set out in detail in clauses 23 and 24 of this Lease.

### 5 Not to sign over this Lease

- 5.1 Subject to the RCLA, the Lessee is not permitted to transfer, assign, sublet or otherwise give up or share possession of the Premises unless it has received the Council's prior written consent. In the case of a transfer or assignment, the Council agrees that it will not unreasonably withhold its consent.
- 5.2 The Lessee will be responsible at its own cost to satisfy the Council that any proposed new lessee will be a suitable body to lease the Premises.
- 5.3 If the RCLA applies to this Lease, the Lessee must not assign or transfer the Premises or any part of it, unless:
  - 5.3.1 the proposed assignee or transferee does not propose to change the Use of the Premises as defined in **Item 9** of the Schedule;
  - 5.3.2 the proposed assignee or transferee is able to meet the financial obligations under this Lease; and
  - 5.3.3 the Lessee has complied with the Council's procedural requirements for obtaining the Council's consent.

- 5.4 The Lessee must not Sublease the Premises or any part of it, unless it first obtains the consent in writing of the Council.
- 5.5 The Lessee must not use this Lease or the Premises as security for a loan or otherwise deal with the Premises, unless it first obtains the consent in writing of the Council.

## 6 To use the Premises as intended

- 6.1 The Lessee must not use, or allow any other person to use, the Premises for:
- 6.1.1 any purpose or activity except for that stated in **Item 9** of the Schedule, unless it first obtains the consent in writing of the Council;
- 6.1.2 residential purposes; or
- 6.1.3 anything that is illegal or immoral.

## 7 To maintain

- 7.1 The Lessee must keep and maintain the Premises in good condition and free from hazards. For example (but without limitation), the Lessee must:
- 7.1.1 keep the Premises clean, tidy and free from rubbish, particularly rubbish generated by the sale of confectionary, such as bubble-gum, and lolly wrappers;
- 7.1.2 keep the inside and outside of all windows clean;
- 7.1.3 maintain all of the Lessee's property in good condition so as to prevent any hazard to any person or any deterioration in the condition of the Premises;
- 7.1.4 repair any damage to the Premises, or the Property, caused by either the Lessee, or its visitors;
- 7.1.5 repair or replace items in or attached to the Premises which are damaged or worn with items of the same or similar quality to those in use when they were last replaced with the Council's approval, or if they have not been so replaced, to those in use at the Commencement Date.
- 7.1.6 look after and keep well watered, pruned and mowed (as the case may be) any trees, grass, shrubs, flowers or other plants on the Premises;
- 7.1.7 keep all toilet fittings, sinks, drains, pipes and other plumbing clean, in good repair and free from blockages;
- 7.1.8 ensure that no part of the Premises becomes insanitary;
- 7.1.9 keep the Premises free from all vermin and pests;
- 7.1.10 paint any buildings and other improvements on the Premises to the Council's satisfaction, whenever the Council reasonably requires it.
- 7.2 The Lessee does not have to do any structural works except for:
- 7.2.1 works on any building or structure erected by the Lessee under **Clause 11**;  
or

7.2.2 works needed as a result of a negligent or wrongful act (or failure to act) by the Lessee or its visitors; or

7.2.3 works necessary as a result of, or in order to accommodate, the particular use to which the Premises is being put by the Lessee; or

7.2.4 works needed as a result of any other breach of this Lease by the Lessee.

7.3 However, the Lessee does not have to do anything if the cost of doing it is able to be recovered under a claim against insurance which either the Lessee or Council has taken out under this Lease.

## **8 To notify Council of accidents and hazards**

8.1 The Lessee must give to the Council prompt notice in writing of:

8.1.1 any accident;

8.1.2 anything that needs to be repaired by the Council; or

8.1.3 anything which could present a hazard, or which could harm the Premises, the Property or any person.

## **9 To permit Council to inspect**

9.1 The Lessee must permit the Council (or its workers) to enter the Premises and to inspect it.

9.2 The Council must give the Lessee reasonable notice before exercising its rights under clause 9.1 (except in an emergency) and must, as far as possible, exercise those rights outside operating hours unless otherwise agreed.

## **10 To do work required by the Council**

10.1 If the Council (or its workers), on inspection under clause 9 finds that any maintenance or repair work is needed on the Premises then:

10.1.1 If the work needed is the responsibility of the Lessee under this Lease, then the Council may serve on the Lessee a notice, stating the things which the Lessee must do and the time within which they must be done;

10.1.2 If the work needed is not the responsibility of the Lessee, or if it is an emergency, the Council may do the work itself. The Council must, as far as possible, carry out the work outside operating hours unless otherwise agreed.

10.2 The Lessee must comply with the notice to the satisfaction of the Council within the time stated in the notice. If it fails to do so, then the Council (or its workers) may itself do any of the things required by the notice.

10.3 The costs incurred by the Council in carrying out any of the work under clause 10.2 may be recovered from the Lessee. The Council must issue an invoice to the Lessee to recover costs under this clause, and the Lessee must pay this invoice within 30 days after receiving the invoice.

10.4 The Council may recover the money in the same way as it can recover the annual rent.

## 11 **Not to erect or alter buildings without consent**

- 11.1 Unless it first obtains the consent in writing of the Council, the Lessee must not do any of the following things on the Premises:
- 11.1.1 erect a building or structure;
  - 11.1.2 fix anything to the outside of a building or structure;
  - 11.1.3 alter any existing water supply or drainage facilities;
  - 11.1.4 alter or demolish an existing building or structure;
  - 11.1.5 install any water, gas or electrical appliances;
  - 11.1.6 install any lighting or air conditioning equipment;
  - 11.1.7 paint any building, structure or other surface in a colour different from the existing colour;
  - 11.1.8 make any other change of a permanent nature.
- 11.2 Before the Council consents to any works under clause 11.1:
- 11.2.1 the Lessee must provide full details of the proposed alteration and additions to the Council; and
  - 11.2.2 the Council may impose any conditions it considers necessary, including requiring the Lessee to obtain the Council's consent to any agreements that the Lessee enters into in relation to the alterations or additions.
- 11.3 If the Council grants consent under clause 11.1 the Lessee must:
- 11.3.1 carry out the works in accordance with the conditions imposed by the Council and with the approvals made by Council in its capacity as Lessor under this Lease; and
  - 11.3.2 carry out the works in accordance with all Statutory requirements; and
  - 11.3.3 carry out the works in a way that minimises disturbance to others.
- 11.4 Unless otherwise agreed in writing, any alterations or additions to the Premises or the Property made pursuant to this clause will be the property of the Council.

## 12 **Not to erect signs without consent**

- 12.1 Unless it first obtains the consent in writing of the Council, the Lessee must not display on the Premises or the Property any sign that is visible from outside the Premises.

## 13 **No licences without consent**

- 13.1 Unless it first obtains the consent in writing of the Council, the Lessee must not apply for:
- 13.1.1 a liquor licence under the *Liquor Licensing Act 1997*;
  - 13.1.2 a gaming machine Lease the *Gaming Machines Act 1992*.

13.2 If the Lessee obtains a licence under sub-clause 13.1, then it must not do (or fail to do) nor allow its visitors to do (or fail to do):

13.2.1 anything that is in breach of the relevant Act or of the conditions of the licence; or

13.2.2 anything that may result in the licence being revoked or suspended.

#### 14 **Not to do anything offensive or dangerous**

14.1 The Lessee must not do nor allow its visitors to do:

14.1.1 anything that is noisy, offensive or dangerous; or

14.1.2 anything that causes (or which the Council reasonably thinks might cause) annoyance, nuisance, or damage to any occupier or owner of nearby land; or

14.1.3 anything that is an offence against any Act or law; or

14.1.4 anything that may cause any insurance policy to become void or to be subject to an increased premium.

14.2 Unless it first obtains the consent in writing of the Council, the Lessee must not bring anything onto the Premises or the Property which is dangerous, harmful, poisonous, explosive or flammable unless it is of a kind and in a quantity reasonably necessary for the permitted use of the Premises.

#### 15 **Not to damage neighbouring properties**

15.1 The Lessee must take reasonable care not to damage, or allow its visitors to damage, any neighbouring property.

15.2 If the Lessee breaches this Clause, then it must pay the cost of any repair work that is needed.

#### 16 **To comply with laws**

16.1 The Lessee must comply with all Acts of Parliament, regulations, by-laws, codes of practice or other statutory instruments which (now or in the future) affect the Premises or the Lessee's use of the Premises.

16.2 The Lessee must comply with any requirement to do with the Premises, or with the Lessee's use of the Premises, imposed by the Council or any other Government agency pursuant to the relevant statutory powers of the Council or of such agency.

#### 17 **To comply with health and safety laws**

17.1 Without limiting the generality of Clause 16, the Lessee must especially comply with all requirements under laws to do with work health and safety, public health, fire safety, and safety generally.

For example, the *Work Health and Safety Act 2012*, the *South Australian Public Health Act 2011*, the *Local Government Act 1999*, the *Food Act 2001*, the *Fire and Emergency Services Act 2005*, the *Environment Protection Act 1993*, including the regulations and codes of practice made under them.

**18 No smoking**

- 18.1 Smoking on the Property is prohibited. The Lessee must not permit any person to smoke on or in the vicinity of the Premises.
- 18.2 In accordance with clause 16, the Lessee must comply with all requirements under South Australian laws regarding no smoking in enclosed public places.

**19 Lessee Governance (incorporated entity)**

- 19.1 If the Lessee is an incorporated entity, on or before the Commencement Date, the Lessee must provide to the Council a copy of its constitution and any other rules or documents that regulate the governance and operations of the Lessee.
- 19.2 The Lessee must, within 28 days of any amendments being made to the Lessee's constitution, rules or by-laws, provide to the Council a copy of those amendments.
- 19.3 As and when the Council may reasonably require, the Lessee must provide to the Council such information in relation to the Lessee's use and occupation of the Premises, including:
- 19.3.1 a copy of the annual report of the Lessee, including the balance sheets and auditor's report; and
- 19.3.2 a copy of any insurance policy which the Lessee is required to take out under clause 23, and a copy of the certificate of currency of that policy.
- 19.4 Following any reasonable request from the Council, the Lessee must permit the Council to examine and take copies of:
- 19.4.1 the account books and bank books of the Lessee;
- 19.4.2 the minutes of any meeting of the Lessee or any committee of the Lessee.

**PART THREE - THE COUNCIL'S OBLIGATIONS****20 Quiet enjoyment and exclusive possession**

- 20.1 The Council agrees that, if the Lessee:
- 20.1.1 pays the rent in accordance with this Lease; and
- 20.1.2 complies with all its obligations under this Lease;
- then the Lessee has rights of exclusive possession of the Premises and may quietly enjoy the Premises during the Term stated in **Item 6** of the Schedule without interruption or disturbance from or by the Council.

**PART FOUR - LIABILITY AND INSURANCE****21 Lessee indemnifies Council**

- 21.1 The Lessee indemnifies the Council against all actions, demands, losses, damages, costs and expenses for which the Council may become liable arising wholly or partly in connection with this Lease, including in connection with any of the following:

- 21.1.1 the misuse or negligent use by the Lessee or its visitors of any services or facilities at the Property (for example water, gas, electricity);
  - 21.1.2 the overflow or leakage of water caused (wholly or partly) by any act (or failure to act) of the Lessee or its visitors;
  - 21.1.3 the Lessee's, or its visitors', use or occupation of the Premises; or
  - 21.1.4 any other act (or failure to act) of the Lessee or its visitors;
- except to the extent caused or contributed to by the Council's (or its workers') negligence or default.

21.2 Each indemnity is independent from the Lessee's other obligations and continues during this Lease and after this Lease ends.

## 22 Limits on Council's liability

- 22.1 The Lessee will occupy and use the Premises, for the permitted use, at the risk of the Lessee.
- 22.2 The Lessee releases the Council from any costs or loss arising from any accident, damage or injury occurring on the Premises, except where such costs or loss result from any wilful or negligent act (or failure to act) of the Council (or its workers).
- 22.3 The Council is not responsible for any loss of or damage to any fixtures, fittings or personal property of the Lessee and the Lessee expressly releases the Council in this respect.
- 22.4 The Council is not responsible for any costs or loss suffered by the Lessee arising from any malfunction of or interruption to:
  - 22.4.1 water, gas or electricity services;
  - 22.4.2 air conditioning equipment;
  - 22.4.3 fire equipment;
  - 22.4.4 any other plant, machinery or services;
  - 22.4.5 the blockage of any gutters, pipes or drains
 and the Lessee expressly releases the Council in this respect.

## 23 Insurances the Lessee must obtain

- 23.1 The Lessee must:
  - 23.1.1 have a public risk insurance policy relating to the Premises for the amount stated in **Item 10** of the Schedule or such greater amount as the Council may from time to time require; and
  - 23.1.2 insure all of the Lessee's fixtures, fittings and personal property installed or located in, on or under the Premises for its full replacement value; and

- 23.1.3 take out any other insurances required by any Act or by law or which the Council reasonable requires for at least the amount the Council reasonably requires.
- 23.2 Each insurance policy the Lessee must have under clause 23.1 must:
  - 23.2.1 be with any insurer and on terms reasonably approved by the Council;
  - 23.2.2 be in the name of the Lessee and, if applicable, note the interest of the Council; and
  - 23.2.3 cover events occurring during the policy's currency regardless of when claims are made; and
  - 23.2.4 have no limit on the number of claims that can be made under it.
- 23.3 The Lessee must keep current all of the insurances required under clause 23.1 during the Initial Term as stated in **Item 4** of the Schedule, and period of extension stated in **Item 12** of the Schedule and any period of holding over and the Lessee must, during all of those periods:
  - 23.3.1 pay each premium when it is due for payment;
  - 23.3.2 give the Council copies of certificates of currency before the Lease period stated in **Item 4** of the Schedule commences, each year when the policies are renewed and at any other time the Council reasonably requests;
  - 23.3.3 not vary, allow to lapse or cancel any insurance policy with the Council's consent; and
  - 23.3.4 notify the Council immediately if a policy is cancelled or if an event occurs which could prejudice or give rise to a claim under a policy.
- 23.4 The Lessee must not do anything which may:
  - 23.4.1 prejudice any insurance of the Premises or the Property; or
  - 23.4.2 increase the premium for that insurance.

## 24 **Property insurance**

- 24.1 The party noted in **Item 11** of the Schedule must insure the Premises (not including the Lessee's fixtures and fittings) against damage by fire, storm, tempest, earthquake, flood, explosion, lightning, malicious damage and such other risks as the Council thinks fit for full reinstatement value.
- 24.2 If the party noted in **Item 11** of the Schedule is the Council, the Lessee must reimburse the costs of insurance taken out by the Council under this clause.

## 25 **Insurance claims**

- 25.1 The Lessee must tell the Council by written notice, giving full details, whenever there is a possible or actual claim under any insurance required to be taken out under this Lease.
- 25.2 If there is a claim under any insurance policy taken out by the Council, then -

- 25.2.1 the Council alone may deal with the insurer regarding the claim;
  - 25.2.2 the Council may settle the claim as it thinks fit, and the Lessee will be bound by the settlement; and
  - 25.2.3 the Lessee must pay to the Council any excess which the Council has to pay under the policy, as soon as the Council demands payment of the excess.
- 25.3 If the Lessee does anything which increases the premium of any insurance that the Council has taken out in connection with the Premises or the Property, then, if demanded by the Council, the Lessee must pay the amount of that increase to the Council.

#### PART FIVE - WHAT IF SOMETHING GOES WRONG?

### 26 What if the Premises is damaged?

- 26.1 If the Premises becomes wholly or partly unfit for use because it is destroyed or damaged for any reason, then, this Clause will apply, subject to the RCLA.
- 26.2 If the Council (in its absolute discretion) decides not to rebuild or reinstate the Premises, then it may end this Lease at any time by notice in writing to the Lessee.
- 26.3 If the Council elects not to end this Lease under sub-clause 26.2, then it must ensure that the Premises is made fit for use by the Lessee with all reasonable speed.
- 26.4 Until the Council either ends the Lease or makes the Premises fully fit for use, the Lessee only has to pay a fair proportion of the rent and other costs payable under this Lease, depending on the extent to which it can use the Premises. The Council will decide what a fair proportion in each case is, but in doing so the Council must not act unreasonably.

### 27 What if the Lessee breaches this Lease?

- 27.1 This clause applies if the Lessee:
  - 27.1.1 is behind in rent by twenty-eight (28) days or more; or
  - 27.1.2 is behind by twenty eight (28) days or more in payment of any other moneys due under this Lease; or
  - 27.1.3 fails to meet any of its other obligations under this Lease; or
  - 27.1.4 if an incorporated entity is wound up or ceases to be registered under the *Corporations Act 2001* (Cth); or
  - 27.1.5 is otherwise enters into or resolves to enter into any arrangement, composition or compromise with, or assignment for the benefit of creditors; or
  - 27.1.6 fails to perform its functions as stated in **Item 2** of the Schedule.
- 27.2 If the Lessee is in breach of this Lease pursuant to clause 27.1, the Council may serve on the Lessee a notice stating -
  - 27.2.1 the nature of the breach;

27.2.2 what the Lessee must do to remedy the breach (and within what time provided that the time specified in the notice must be at least 28 days or such longer period as may be agreed); and

27.2.3 whether the Lessee must pay any compensation and, if so, how much.

27.3 If the Lessee fails to comply with the notice within the time stated in it, then the Council may end this Lease and re-possess the Premises.

27.4 Anything done by the Council under this clause does not affect its right to take legal action against the Lessee for any breach of this Lease.

## 28 What if the Property is taken away from the Council?

If the Council finds out that the Government (Federal or State) or a Government authority intends to compulsorily acquire or take over control of the Property, then the Council may end this Lease at any time by giving three (3) months' notice in writing to the Lessee.

## 29 Dispute resolution

29.1 If a dispute arises between the Council and the Lessee as to the terms and conditions of this Lease or the operation of this Lease or as to the rights and obligations of the parties under this Lease, then:

29.1.1 the dispute will be referred to the parties' representatives with a view to the representatives making a recommendation to the parties for the purposes of resolving the dispute; and

29.1.2 if the dispute cannot be resolved by the representatives within fourteen (14) days (or a shorter time if the circumstances require), the dispute may be referred to an independent mediator mutually agreed upon by the parties or, failing agreement, to an independent mediator nominated for appointment by the President or Acting President of the Law Society of South Australia.

29.2 Failing resolution of the dispute by any of the means set out in clause 29.1, the parties may have the dispute determined according to law, including, if appropriate, by reference to a court.

## PART SIX - WHAT HAPPENS WHEN THE LEASE ENDS?

### 30 Lessee must give up the Premises

30.1 At the end of this Lease, the Lessee must leave the Premises cleaned, repaired and in good condition, so as to comply with the Lessee's obligations under this Lease.

30.2 The Lessee may remove from the Premises the Lessee's fixtures and fittings, but the Lessee must immediately repair any damage caused in removing them.

30.3 The Council may, despite any clause in this Lease to the contrary, serve a notice in writing on the Lessee at any time (either during this Lease or at the end of it) requiring the Lessee to remove from the Premises any of the Lessee's fixtures and fittings.

30.4 The Lessee must comply with a notice issued under clause 30.3 within twenty-eight (28) days of receiving it and must at its own cost repair any damage caused to the Premises.

- 30.5 If the Lessee fails to comply with such a notice, the Council may do any of the things required by the notice. The Lessee must reimburse the Council the costs incurred by the Council in doing so.

### 31 **Rights preserved**

- 31.1 When this Lease ends (other than when terminated by the Council for breach by the Lessee), the rights and obligations of the Council and the Lessee under this Lease will come to an end, unless otherwise stipulated in this Lease.
- 31.2 Notwithstanding clause 31.1, if any breach by either party still exists at that time this Lease ends, then the rights of the other party with regard to that existing breach will continue.
- 31.3 Using a right given in this Lease does not affect or limit any other right.

### 32 **Extension of this Lease**

- 32.1 At the end of the Lease period stated in **Item 4** of the Schedule, the Lessee may exercise its Right of Renewal for the further period as stated in **Item 12** of the Schedule.
- 32.2 The Right of Renewal under sub-clause 32.1 can only be exercised if:
- 32.2.1 the Lessee makes the request by written notice given to the Council at least three (3) months (but not more than six (6) months) before the end of the Lease period stated in **Item 4** of the Schedule; and
  - 32.2.2 at the time the Lessee gives that notice, the Lessee is not in breach of this Lease; and
  - 32.2.3 provided that, during the Lease period stated in **Item 4** of the Schedule, the Lessee has not committed any repeated or ongoing breaches of this Lease.
- 32.3 If the Lessee makes a request in accordance with this Clause, then the Council must Lease the Property to the Lessee for the further period stated in **Item 12** of the Schedule at an annual rental adjusted as per the **Special Conditions** of the Schedule.
- 32.4 That **further** Lease will be on exactly the same terms as this Lease, except that this clause 32 will not apply.

### 33 **Holding over**

- 33.1 If, with the consent of the Council, the Lessee stays in occupation of the Premises after the end of this Lease (or any extension of this Lease) then this Lease will continue as a monthly tenancy.
- 33.2 The Lessee must then:
- 33.2.1 pay monthly rent equal to one twelfth of the annual rent payable at that time; and
  - 33.2.2 comply with all of its other obligations under this Lease.
- 33.3 Either party may end the monthly tenancy by giving written notice to the other party.

- 33.4 The notice may be given at any time during the month. The monthly tenancy will then expire one month from the date on which the notice is given.

## PART SEVEN - OTHER RIGHTS AND OBLIGATIONS

### 34 **Rights of Council not limited**

The rights of the Council under this Lease and at law resulting from a breach of this Lease by the Lessee shall not be excluded or limited in any way by reason of the Council having or exercising any powers under this Lease.

### 35 **Council may do works on the Premises**

35.1 The Council may:

35.1.1 install, operate, use, maintain, repair, alter, replace and interrupt services;

35.1.2 carry out works on the Premises or the Property, including extensions, renovation and refurbishments; and

35.1.3 close and restrict access to Common Areas.

35.2 The Council must (except in cases of emergency) take steps to minimise interference with the Lessee's use and occupation of the Premises.

### 36 **No Warranty**

36.1 The Lessee acknowledges that the Council has not given any warranty as to:

36.1.1 the condition of the Premises; or

36.1.2 the structural or other suitability of the Premises for the use referred to in **Item 9** of the Schedule.

### 37 **Whole Agreement**

37.1 The Council and the Lessee acknowledge and agree that this Lease contains and represents the entire agreement reached between them with regard to the Premises and that no promises, representations or undertakings, other than those contained in this Lease, were made or given or relied upon.

### 38 **Notices**

38.1 All notices under this Lease must be in writing.

38.2 Any notice served by the Council on the Lessee may either:

38.2.1 be left at the Premises and addressed to the Lessee; or

38.2.2 be posted to the Lessee at the Premises or at the last known address of the Lessee.

38.3 Any notice served by the Lessee on the Council must be delivered or posted to the Council's offices.

38.4 If a notice is given by post, then it will be taken to be served two clear business days after posting.

### 39 **No waiver**

If the Council accepts or waives any breach by the Lessee, that acceptance or waiver cannot be taken as an acceptance or waiver of any future breach of the same obligation or of any other obligation under this Lease.

### 40 **Void or unenforceable terms**

40.1 Clauses in this Lease must be read down so that they are not void or unenforceable.

40.2 If they cannot be read down, then they must be severed and the remainder of this Lease will continue to apply.

40.3 Anything in this Lease which plainly cannot apply to the Premises must also be severed.

### 41 **Consents and approvals**

If any consent or approval is needed from any planning authority or other Government agency for anything the Lessee intends to do on the Premises, then it is the responsibility of the Lessee to obtain that consent or approval.

### 42 **Special conditions**

42.1 The Special Conditions stated in **Item 13** of the Schedule are incorporated into this Lease.

42.2 If there is any inconsistency between the Special Conditions and anything else in this Lease, then the Special Conditions will prevail.

### 43 **Loan Agreement**

43.1 The Council and the Lessee agree that:

43.1.1 any breach of a Loan Agreement by the Lessee will be deemed to be a breach of this Lease; and

43.1.2 in the event that a Loan Agreement is terminated for whatever reason, then the Council may also terminate this Lease.

### 44 **Redevelopment, asset rationalisation and demolition**

44.1 If as part of any redevelopment, asset rationalisation or other project conducted by the Council that includes the Premises, or for any other reason the Council wishes to demolish or acquire vacant possession of the Premises or any part of the Property ("Redevelopment"), then the Council may, subject to the RCLA:

44.1.1 Terminate this Lease subject to the following provisions:

44.1.1.1 the Council must provide the Lessee with details of the proposed Redevelopment sufficient to indicate a genuine proposal to carry out that Redevelopment within a reasonably practicable time after this Lease is to be terminated;

44.1.1.2 at any time after providing the Lessee with those details, the Council may give the Lessee a written notice of termination of this

Lease ("Termination Notice") specifying the date on which this Lease is to come to an end;

- 44.1.1.3 the date listed in the Termination Notice must be not less than six months after the Termination Notice is given. Unless terminated earlier by the Lessee under clause 44.1.1.4, this Lease comes to an end at midnight on the day specified in the Termination Notice;
  - 44.1.1.4 at any time after receiving a Termination Notice, the Lessee may terminate this Lease by giving not less than seven days' written notice to the Council.
- 44.1.2 Require the Lessee, upon reasonable notice, to vacate the Premises permanently and to occupy an alternative site owned by the Council subject to the following conditions:
- 44.1.2.1 the Council must provide the Lessee with details of the proposed Redevelopment sufficient to indicate a genuine proposal to carry out that Redevelopment within a reasonably practicable time after this Lease is to be terminated;
  - 44.1.2.2 the Council may at any time after providing the Lessee with those details, give the Lessee a written notice of termination of this Lease ("Relocation Notice") specifying the date on which the Lessee must relocate being a date not less than six months after the Relocation Notice is given;
  - 44.1.2.3 the Lessee must relocate to the alternative site on the date stipulated in the Relocation Notice and must give to the Council all assistance and cooperation necessary to give effect to this clause and to the relocation including the execution of any documents or instruments which the Council reasonably requires;
  - 44.1.2.4 the alternative site must, in the reasonable opinion of the Council, be of comparable quality and utility to the Premises;
  - 44.1.2.5 the Council may determine, in its absolute discretion, to assist the Lessee with any reasonable costs incurred in relocating; and
  - 44.1.2.6 the Lessee's occupation of the alternative site is on the same terms as this Lease (changed as necessary).
- 44.1.3 Require the Lessee, upon reasonable notice, to vacate the Premises temporarily to enable alternative use by the Council, subject to the following conditions:
- 44.1.3.1 the Council must provide the Lessee with details of the reasons for which temporary possession of the Premises by the Council is required and an estimated time frame during which the Premises will not be available for use by the Lessee;
  - 44.1.3.2 the Council may at any time after providing the Lessee with those details, give the Lessee a notice specifying the date on which the Lessee is required to vacate the Premises ("Vacation Notice"), which must be a date not less than three months after the Vacation Notice is given;

- 44.1.3.3 the Lessee must vacate the Premises on or before the date specified in the Vacation Notice and leave the Premises in a neat and tidy condition, consistent with the Lessee obligations under this Lease;
- 44.1.3.4 during the period in which the Lessee is not in possession of the Premises, the annual rent and any other moneys payable to the Council under this Lease will not be payable by the Lessee but the Lessee will not be entitled to any compensation;
- 44.1.3.5 the Council will ensure the Premises is handed back to the Lessee in a condition consistent with that in which the Lessee gave up possession of the Premises.

**45 Goods and Services Tax (GST)**

- 45.1 In this clause an expression defined in the *A New Tax System (Goods and Service Tax) Act 1999* (Cth) has the meaning given to it in that Act.
- 45.2 If a party makes a supply under or in connection with this Lease in respect of which GST is payable, the consideration for the supply is increased by an amount equal to the GST payable by the supplier on the supply.
- 45.3 A party need not make a payment for a taxable supply under or in connection with this Lease until it receives a tax invoice for the supply.

SIGNED as an agreement on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

THE COMMON SEAL of \_\_\_\_\_ )  
[insert details] \_\_\_\_\_ )  
was affixed in the presence of \_\_\_\_\_ )

.....  
Mayor

.....  
Chief Executive Officer

(NAME OF LESSEE) \_\_\_\_\_ )  
was affixed in the presence of \_\_\_\_\_ )

.....  
Authorised Office Bearer

.....  
Authorised Office Bearer

## THE SCHEDULE

**Item 1**

The Lessee

Name: &lt;NAME&gt;

Address: [REDACTED]**Item 2**

Functions of Lessee

\*\*\*

**Item 3**

The Property

\* Name of the Property: Burnside Swimming Centre Kiosk

\* Address: Burnside Swimming Centre  
Cnr Greenhill Road and Howard Tce  
Hazelwood Park SA 5066\* Legal description: That portion of the land comprised in  
Certificate of Title Volume 5804 Folio 323 being the area  
outlined in red/marked on the plan attached to this Lease\* Is the property classified as "community land" under section  
193 of the Local Government Act 1999? (yes/no) YES/NO\* If "yes", have the relevant steps set out in the Council's  
public consultation policy been followed? (yes/no) YES/NO\* If "yes", is the Lease authorised by and consistent with the  
Council's community land management plan? (yes/no)  
YES/NO**Item 4**

The Initial Term

Three (3) Years commencing on the commencement date set out  
in **Item 5** of the Schedule.**Item 5**The Commencement  
Date

\*\*\*.

**Item 6**

Term

Five (5) Years (comprising the Initial Term and, if the Renewal  
Term, if exercised)**Item 7**

---

Annual rent and Time of Payment: **Refer to Special Conditions**

---

**Item 8**  
Rent Review Date: The anniversary of the Commencement Date of this Lease.

---

**Item 9**  
Use of Property: Retail provision of food and beverages to customers attending Burnside Swimming Centre and Hazelwood Park only.

---

**Item 10**  
Public Risk Insurance: Twenty Million Dollars (\$20,000,000.00)

---

**Item 11**  
Party responsible for taking out property insurance: City of Burnside

---

**Item 12**  
Renewal Term: Two (2) Years commencing on expiry of the Initial Term.

---

**Item 13**  
Special Conditions:

**RENT PAYABLE**

1. Commencing rent for the Premises is **\$650.00 plus GST** per week, payable monthly in advance.
2. The Lessee shall only be required to pay rent during the pool season, being <INSET COMMENCEMENT DATE> to <INSERT TERMINATION DATE>, and any extended trading hours as arranged with the Lessor.
3. Rent payable will be increased by **\$25 per annum** for the duration of the Initial Term, applied from the Rent Review Date.
4. Commencing rent for the Renewal Period stated in Item 12 of the Schedule is **\$700.00 plus GST** per week, plus the percentage increase in CPI (Adelaide All Groups) in the previous twelve months.
5. Rent payable during the term of the Renewal Period will increase annually in proportion to the increase in the CPI in the previous twelve months.

**OUTGOINGS**

6. Lessee to pay a share of the annual outgoings divided on a pro rata basis.
7. Estimated outgoings is **\$381.35 plus GST** spread evenly over the pool season identified in Special Condition 2, above.

**BANK GUARANTEE**

8. The Lessee is required to provide either an unconditional Bank guarantee the equivalent of two (2) months' rent inclusive of outgoings plus GST, being **\$5720 (incl. GST)**;

---

---

or, if an incorporated entity, one (1) Director's Personal Guarantee for the performance of the Lease.

### **CORE TRADING HOURS**

9. During the Pool Season identified in Special Condition 2 above, the core trading hours are:

Monday	7am-6pm
Tuesday	7am-6pm
Wednesday	7am-6pm
Thursday	7am-6pm
Friday	7am-6pm
Saturday	7am-6pm
Sunday	8am-6pm

Public Holidays: As agreed with the Council and Pool Management, subject to the following:

Christmas Day: Closed  
Good Friday: Closed

**Note:** The Lessee will be penalised for non-trading during the Core Trading Hours. However, the Lessee is permitted to trade extended trading hours within the Pool season without penalty or additional cost.

### **BASIC KIOSK FIT OUT**

10. The Council will provide the Lessee with a basic kiosk fit out. The following items to be provided are indicative and subject to change and further negotiation:

#### New Equipment

- Fryer and Electronic Chip Warmer
- Roband Warmer
- Refrigerated Sandwich Bar
- 2-Door Refrigerator
- Under-bench milk fridge

#### Fixtures

- Stainless Steel Benches
- Stainless Steel Island Bench
- Mobile Preparation Bench
- Adjustable Shelving
- Hand Basin

11. The Lessee must obtain the written consent of the Council for any additional fit out works above the basic kiosk fit out provided.

12. Any additional fit out works required by the Lessee will be at the Lessee's cost.

13. Any additional fit out work required by the Lessee, and approved by the Council, will need to be carried out in accordance with the terms of this Lease.

### **SAFE CUTLERY AND CONTAINERS**

14. As far as is reasonably practicable, the Lessee is to sell or provide as part of sale cutlery and containers that are safe and non-breakable. For example, plastic disposable cutlery, and plastic foot containers and bottles.

---

---

15. Despite anything else in this Lease, the Council will not be liable (except to the extent of any negligence of the Council) for any loss or damage suffered by any person resulting from the supply and use of any cutlery or containers.

---

**Item 14**

Identified Defects:

\*\*\*