



Council Meeting Agenda

**Tuesday 13 December 2011 at 7.00 pm
Council Chamber, 401 Greenhill Road, Tusmore**

Members: Mayor, David Parkin
Councillors Bills, Capogreco, Cornish, Davey, Hasenohr, Lemon,
Monceaux, Osterstock, Palk, Piggott, Pocock and Wilkins

1. Opening Prayer

2. Kurna Acknowledgement

3. Apologies

4. Leave of Absence

5. Confirmation of Minutes

Recommendation

That the Minutes of the following Council meetings be taken as read and confirmed:

5.1 The General Meeting of Council held on 22 November 2011

5.2 The Special Meeting of Council held on 1 December 2011

6. Mayor's Report

7. Reports of Delegates/Working Parties

8. Deputations

Leonie Grace, Lease of Shops at 269, 275 and 277 Kensington Road, Kensington Park

9. Petitions and Memorials

*If you would like to know about Council and Council Committee meeting procedures, please visit our website and type the following address:
www.burnside.sa.gov.au/GOTO/MeetingPractice.*

10. Questions (without debate) on Notice

Nil

11. Consideration of Motions of which Notice has been given

Nil

12. Questions (without debate) of which Notice has not been given**13. Consideration of Motions of which Notice has not been given****14. Reports of Officers**

Items where there is no discussion to be had, are voted on individually at the beginning of this section of the Agenda, then all other items are debated and voted on individually.

**14.1 Public Minutes of CEO Recruitment, Performance Appraisal and
Remuneration Review Committee Meeting – 5 December 2011** p7
Attachment A 8

14.2 Audit Committee Minutes – 9 November 2011 p11
Attachment A 12

14.3 CEO Report – November 2011 p15

**15. Adjournment of Council for the the Meetings of the Corporate & Community
Services Standing Committee and Planning, Heritage & Infrastructure
Standing Committee**

Recommendation

That the Meeting be adjourned for the meetings of the Corporate & Community
Services Standing Committee and Planning, Heritage & Infrastructure Standing
Committee at pm.

16. Resumption of Council

Recommendation

That the Meeting be resumed at pm.

17. Adoption of the Corporate & Community Services Standing Committee and Planning, Heritage & Infrastructure Standing Committee Reports

Recommendation

That the reports of the Corporate & Community Services Standing Committee and Planning, Heritage & Infrastructure Standing Committees meeting held on 13 December 2011 be received and the recommendations contained therein be adopted.

18. Other Business

18.1 Items which must be dealt with as a matter of urgency.

18.2 Matters of special interest which Members wish to draw to the attention of the Chamber.

18.3 Application for Leave of Absence.

19. Regional Subsidiaries – Eastern Waste Management Authority, Highbury Landfill Authority, Eastern Health Authority

20. Confidential Items

20.1 Chelsea Cinema Expressions of Interest – Outcomes from Negotiations with Confirmed Applicants and Determination of the Next Steps in the Process **p18**

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20.1.1 That pursuant to Section 90(2) and (3) (a) and (b) of the Local Government Act, 1999, the Council orders that all members of the public, except the Chief Executive Officer, General Manager, Corporate & Community Services, Acting General Manager, Planning & Infrastructure, Manager Facilities and Procurement, the Executive Assistant and the EOI Negotiator (Mark Booth) be excluded from attendance at the meeting for Agenda Item 20.1 – Chelsea Cinema Expression of Interest – Chelsea Cinema Expressions of Interest – Outcomes from Negotiations with Confirmed Applicants and Determination of the Next Steps in the Process.

20.1.2 The Council is satisfied that:

20.1.2.1 pursuant to Section 90(3)(a) of the Act, the information to be received, discussed or considered will involve the unreasonable disclosure of information concerning the personal affairs of one or more of the Applicants; and

20.1.2.2 pursuant to Section 90(3)(b) of the Act, the information to be received, discussed or considered is information the disclosure of which could reasonably be expected to confer an advantage for a person or persons with whom the Council is proposing to conduct business and the disclosure of this information would, on balance, be contrary to the public interest.

20.1.3 The Council is satisfied that in all of these circumstances the principle that the meeting be conducted in a place open to the public has been outweighed.

20.2 Consideration of Purchase of Land

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20.2.1 That pursuant to Section 90(2) and (3) (a) and (b) of the Local Government Act, 1999, the Council orders that all members of the public, except the Chief Executive Officer, General Manager, Corporate & Community Services and Acting General Manager, Planning & Infrastructure be excluded from attendance at the meeting for Agenda Item 20.2 – Consideration of Purchase of Land.

20.2.2 The Council is satisfied that:

20.2.2.1 pursuant to Section 90(3)(a) of the Act, the information to be received, discussed or considered will involve the unreasonable disclosure of information concerning the personal affairs of one or more of the Applicants; and

20.2.2.2 pursuant to Section 90(3)(b) of the Act, the information to be received, discussed or considered is information the disclosure of which could reasonably be expected to confer an advantage for a person or persons with whom the Council is proposing to conduct business and the disclosure of this information would, on balance, be contrary to the public interest.

20.2.3 The Council is satisfied that in all of these circumstances the principle that the meeting be conducted in a place open to the public has been outweighed.

21. Closure

Item No: 20.1
To: Council
Date: 13 December 2011
Author: Barry Cant – Manager Facilities and Procurement
Contact: 8366 4223
Subject: CHELSEA CINEMA EXPRESSIONS OF INTEREST – OUTCOMES FROM NEGOTIATIONS WITH CONFIRMED APPLICANTS AND DETERMINATION OF THE NEXT STEPS IN THE PROCESS
Attachments: A – Chelsea Cinema Confirmed Applicants Summary by the EOI Negotiator
B – Draft Lease Agreement for Chelsea Cinema
C – Draft Lease Agreement for 39 May Terrace
D – Letters provided to existing tenants on 30 November 2011
E – Letters from existing tenants
F – Proposed Media Release
Prev. Resolution: C8153, 22/3/11
C8188, 12/4/11
C8307, 28/6/11
C8390, 18/08/11
C8447, 6/10/11
C8456, 11/10/11
C8486, 8/11/11

Officer's Recommendation

1. That the Report be received.
2. That the Chelsea Cinema Confirmed Applicants Summary prepared by the EOI Negotiator be received.
3. That Council authorises the Mayor and Chief Executive Officer to execute and affix the Council's Common Seal (where necessary) to:
 - 3.1 a lease of the whole of the land comprised and described in Certificate of Title Volume 5899 Folio 223 to _____ substantially in the form of the draft lease, (as provided in Attachment B to this Report) and including the following terms:
 - 3.1.1 a warranty by the Council to continue to maintain and make available to the public the public carpark at 35 May Terrace, Kensington Park, South Australia, being the whole of the land comprised and described in Certificate of Title Volume 5663 Folio 617, for a period of not less than __ years;
 - 3.1.2 a lease term of ____ and ____ periods of rights of renewal;
 - 3.1.3 an annual rent amount of _____;
 - 3.1.4 rent review dates to be set at _____;
 - 3.1.5 security requirements in the form of a _____ (bank guarantee or personal guarantee);
 - 3.1.6 the permitted use of the site is _____;
 - 3.1.7 the continued promotion and use of the premises by community and charity groups by way of _____;

- 3.1.8 fit out works including _____;
- 3.1.9 and in any other respect subject to such variations as the Chief Executive Officer determines to be appropriate and in the Council's interests; and
- 3.2 such other documents as may be necessary to give effect to the lease of the [land described in paragraph (3.1)] to _____
4. That Council authorises the Mayor and Chief Executive Officer to execute and affix the Council's Common Seal (where necessary) to:
- 4.1 A lease of the whole of the land comprised and described in Certificate of Title Volume 5701 Folio 749 to _____ substantially in the form of the draft lease, (as provided in Attachment C to this Report) and including the following terms:
- 4.1.1 a lease term of ____ and ____ periods of rights of renewal;
- 4.1.2 an annual rent amount of _____;
- 4.1.3 rent review dates to be set at _____;
- 4.1.4 security requirements in the form of a _____ (bank guarantee or personal guarantee);
- 4.1.5 the permitted use of the site is _____;
- 4.1.6 fit out works including _____;
- 4.1.7 and in any other respect subject to such variations as the Chief Executive Officer determines to be appropriate and in the Council's interests; and
- 4.2 such other documents as may be necessary to give effect to the lease of the [land described in paragraph (4.1)] to _____.
5. That once the Lease Agreement is signed and accepted by both parties, Council advises the remaining Applicants that their Expressions of Interest for the lease of the Chelsea Cinema have been unsuccessful.
6. That Council advise the existing tenants of the Chelsea Cinema; Chelsea Fashions and 39 May Terrace that in accordance with previous notices provided, the respective agreements with Council will conclude on 31 December 2011, and that it is expected that all exit conditions are adhered to.
7. That Council issues a Media Release once the existing tenants have been advised of Council's decision.

Officer's Recommendation

That pursuant to Sections 91(7) and (9) of the Local Government Act, 1999, the Council orders that the report and minutes relating to Item 20.1 'Chelsea Cinema Expressions of Interest - Outcomes From Negotiations with Confirmed Applicants and Determination of the Next Steps in the Process' with the exception of Attachment F, having been considered and dealt with by the Council on a confidential basis under Section 90(2) and (3) (a) and (b) of the Local Government Act, 1999, are to be kept confidential and not available to the public for a period of 12 months from the date of this confidentiality order.

Purpose

1. To provide Council with the Chelsea Cinema Confirmed Applicants Summary prepared by the Council's EOI negotiator and copies of draft lease agreements for Council's consideration and endorsement.
2. For Council to determine the next steps in the Expression of Interest process and to potentially seek Council's endorsement of a successful Applicant.

Strategic Plan

3. The following Strategic Plan provisions are relevant:

"Leading best practice and compliance in Council business"

"A financially accountable and sustainable organisation"

"A community that is confident its views are heard, understood, genuinely valued and reflected in Council business"

Communications/Consultation

4. The following communication and consultation has been undertaken in the preparation of this Report:
 - 4.1 Norman Waterhouse Lawyers;
 - 4.2 BRM Holdich;
 - 4.3 Powell & Co Pty Ltd;
 - 4.4 Ongoing discussions with Confirmed Applicants; and
 - 4.5 Discussions with existing tenants.

Statutory

5. The following legislation is relevant in this instance:

Local Government Act, 1999

Retail and Commercial Leases Act, 1995

Residential Tenancies Act, 1995

Policy

6. The following Council Policies are relevant in this instance:

Proceeds from Economic Development Activity

Procurement (Contracts, Tenders and OHSW) - Section 49 Policy

Risk Assessment

7. The consideration of securing the appropriate lease agreement for the Chelsea Cinema and adjoining site, represents good risk and asset management for the facility.
8. This Report also considers options in respect of the current tenants of the facility, including options for extensions to existing leases, past the current deadline of 31 December 2011.

Finance

9. Council Administration is preparing a 'financial analysis' of the two separate proposals, which will demonstrate to Council a summary of the net cost benefit to Council over the term of each Confirmed Applicants proposed term of agreement. This will be provided to Members prior to the 13 December 2011 meeting of Council.

Discussion

Background

10. At the Special Council Meeting on 6 October 2011, Council resolved (C8447):
 1. *That Council receive and endorse the Expressions of Interest Assessment and Recommendations Report for the Chelsea Cinema.*
 2. *In accordance with the Request for Expressions of Interest process, that Council nominates Applicant 2 (the Republic Theatres Pty Ltd) and Applicant 4 (the Maras Group) as the Preferred Confirmed Applicants.*
 3. *In accordance with the Request for Expressions of Interest process, that Council enter into negotiations with the Preferred Confirmed Applicants regarding the Chelsea Cinema and Site.*
 4. *That as part of the negotiations with the Preferred Confirmed Applicants, and prior to proceeding to any final decision or entering into any binding contracts, that the CEO report to Council in one month on the following matters:*
 - 4.1 *the final form of the development proposal, showing retention of the interior and exterior Heritage features of the building, appropriate development of the adjoining property and how this would complement, integrate with and enhance the Chelsea Cinema;*
 - 4.2 *car parking;*
 - 4.3 *commercial, including the proposed annual rental payments, financial and legal issues relating to the terms of the lease; and*
 - 4.4 *such other matters that arise during the course of the negotiations, or otherwise become apparent to the CEO.*
11. At the 8 November 2011 meeting of Council (C8486), it was resolved:
 1. *That the Report be received.*
 2. *That Council advises Applicant 1 and Applicant 5 that their Expressions of Interest for the lease of the Chelsea Cinema has been unsuccessful.*

Assessment of the EOI Assessor

12. A Special Council Meeting was held on 1 December 2011, in which the EOI negotiator presented to Council details of the ongoing discussions with Applicants 2 and 4.
13. Applicant 2 made a presentation to Council during the meeting, however Applicant 4 was unable to attend, instead providing a powerpoint for Council's perusal.
14. Elected Members had an opportunity to discuss the matter in detail, with the following points being raised and/or request for clarification:
 - 14.1 Confirmation of the proposal terms – length of lease, rental amount, investment in the building, details of community use commitment.
 - 14.2 Opportunity to have 39 May Terrace on a separate lease agreement to provide Council with more flexible options in the future.
 - 14.3 Car parking – Council to make a commitment in the lease for the provision of a public car park.
 - 14.4 Council contribution – What are the estimates of these figures?
 - 14.5 Exit strategy for existing tenants – How can Council manage this process?
 - 14.6 How we end the relationship with Wallis?
15. The above matters are all considered later within the body of this Report.
16. Provided in Attachment A is the Chelsea Cinema Confirmed Applicants Summary prepared by the Council's EOI negotiator.

Draft Lease Agreements

17. Provided in Attachment B is a draft lease for the purpose of furthering discussions and negotiations with the nominated Applicant in relation to the whole of the land on which the Chelsea Cinema and shops are situated.
18. Some of the specific terms that will need to be inserted into the lease when they become known are:
 - 19.1 The lease term and any rights of renewal.
 - 19.2 The rent amount.
 - 19.3 Rent review dates.
 - 19.4 Security requirements, ie bank guarantee or personal guarantee.
 - 19.5 The permitted use.
 - 19.6 The continued promotion and use of the premises by community and charity groups.
 - 19.7 Fit out works (if any).
 - 19.8 Commitment from Council in relation to car parking.
19. If there is no responsibility for repairs or maintenance of a structural nature, and no requirement to make capital contributions towards the repair and maintenance of the

premises, there is no need to obtain an exemption from the operation of the *Retail and Commercial Leases Act 1995* to the lease.

20. Provided in Attachment C is a draft lease for the purpose of furthering discussions and negotiations with the nominated Applicant in relation to 39 May Terrace.
21. No indicative terms were provided for a lease of the 39 May Terrace Site in the Request for Expressions of Interest documents. As such, the terms contained within the attached template lease are standard commercial lease terms only and will need to be reviewed, tailored and finalised to make sure that they are appropriate for the Council and accurately reflect the agreement between the Council and the proposed lessee.

Ongoing Discussions with Existing Tenants

22. At the 28 June 2011 meeting of Council (C8307), it was resolved:

“.....That Council authorises the Acting Chief Executive Officer to send written notice to each lessee, within the Chelsea Cinema site, of the Council's intention to end their lease on 31 December 2011 (this will comply with the requirements of section 20J of the Retail and Commercial Leases Act, 1995 where this section applies to any of the leases). These lessees are as follows:

- 1. Leonie Grace Milburn for the occupation of shops A, B and C (as defined in the REOI Documents) for the operation of Chelsea Fashions;*
 - 2. Riverline Drive-in Theatres Pty Ltd for the occupation and operation of the Chelsea Cinema; and*
 - 3. Patricia Kumnick for the occupation of the residence located at 39 May Terrace.....”*
23. The notice provided to each tenant either exceeded (in the case of the Cinema and residential property); or met the legal obligations (Chelsea Fashions) for notices required to cease each lease agreement.
 24. Council Administration met personally with each tenant on 30 June 2011 to provide each of them with their specific notice, ending each lease agreement, on 31 December 2011.
 25. Council Administration also met with the tenant of 39 May Terrace on 30 September 2011 and presented her with the 'Notice of Termination by Landlord' in accordance with the Residential Tenancies Act, 1995.
 26. On 30 November 2011, Council Administration once again met personally with all three tenants and presented them with the final 'one month notice' for cessation of the existing lease. A copy of each letter is provided in Attachment D.
 27. Council has received return correspondence from all three tenants, requesting that they remain in occupation of their current leased premises, past 31 December 2011. This correspondence is presented to Council in Attachment E.

28. While it would be ideal to have an operating cinema available to members of the community during January 2012, it is the recommendation of the Administration that Council maintain the current resolution to cease all agreements at 31 December 2011, for the following reasons:
- 28.1 Council has provided more than satisfactory notification to all existing tenants and to make a 'clean break' would be advantageous to the future management of the site.
- 28.2 There would be an opportunity to undertake maintenance work during January 2012 while the building is closed (it is likely that if Wallis remove all the fixtures as advised, the facility will be unable to operate as a functioning Cinema immediately).
- 28.3 Council Administration has spoken to both Confirmed Applicants seeking their views as to their lease commencement. Both Confirmed Applicants have advised, that if successful, they would wish to commence their lease on 1 January 2012.
- 28.4 If the successful Applicant wishes to enter into a short term sublease arrangement, maintaining the permitted use, with either Chelsea Fashions or the residential tenant, they are at liberty to do so. It should be noted that the Republic Theatre Group is willing to offer the shop tenant an extension of their lease for a minimum one month on the same terms and conditions as currently apply. Republic Theatre Group is also willing to offer the tenant of the house an extension of their lease for at least 3 months on the same terms and conditions as currently apply.
- 28.5 The Applicant has confirmed the essential lease conditions within the expression of interest document are acceptable in their current form.

Removal of Equipment by Wallis

29. Clause 4.13 of the current lease between Wallis and the City of Burnside requires Wallis to remove all fixtures, fittings, plant, machinery and other materials and articles brought onto the premises by Wallis prior to the end of the lease, unless the Council advises the Lessee by notice that it does not require such removal. Any damage caused by Wallis in removing these items must be repaired and made good by Wallis. As such, if there are any items that the Council does not require Wallis to remove, for example, the air-conditioning, then the Council may notify Wallis of this fact. However, this does not prevent Wallis removing such items anyway if it wishes to do so.
30. If Wallis fails to comply with its obligations then Wallis will be in breach of the Lease. In addition to any other rights that the Council may have at law in relation to the breach (for example, to require the breach to be remedied, to terminate the lease, to sue the lessee for damages), the Council may, pursuant to clause 4.13.4 of the lease, remove the items itself, place them in storage and make good any damage caused and recover the costs of doing so from Wallis.
31. After arranging storage of the goods, the Council has obligations under section 67a of the Landlord and Tenant Act to notify Wallis of the storage of any goods and provide an opportunity for such goods to be recovered by Wallis. Any unclaimed goods must then be sold at auction.

Entry into New Lease

32. If the Council decides to grant a one month fixed term lease to any of the existing tenants, in respect of the Chelsea Cinema and the shops, these leases would not attract the operation of the *Retail and Commercial Leases Act 1995* (RCLA). However, any

fixed term lease granted for more than one month will attract the application of most of the provisions of the RCLA.

33. Any new lease to be granted to the existing residential tenant at 39 May Terrace will need to comply with the Residential Tenancies Act, and this includes giving the tenant a notice making it clear that the tenancy is being granted for a short fixed term, which notice must be signed by both parties.

Further Information

34. The public car park at 35 May Terrace is classified as community land and thus any proposal to grant a lease or licence over it, will require the Council to first take the steps set out in its public consultation policy in accordance with section 202 of the *Local Government Act, 1999*.
35. Rather than entering into a specific lease over the car park at 35 May Terrace, it is recommended that Council commit to the car park remaining as a public car park (i.e. not giving any particular rights of use to any person but for members of the public all to have rights in common to use the car park) without having to comply with the requirements of section 202 of the Act.
36. A copy of the proposed commercial lease needs to be provided to any party to whom the Council offers or invites to enter into a new lease for the Chelsea Cinema, the shops and 39 May Terrace as soon as the Council decides which party it wishes to offer to negotiate with for a new lease(s). A disclosure statement also needs to be provided prior to such lease being entered into (meaning, prior to the lease being signed, the lessee commencing the payment of rent or the lessee taking possession of the premises – whichever occurs first).
37. A short term works agreement could be entered into prior to any new lease taking effect to enable a new lessee to undertake certain fit out works at the Cinema.
38. An amount of \$85,000 has been allocated in the 2011/12 Annual Business Plan and Budget to undertake works of a conservation nature on the Chelsea Cinema. It is expected that the upgrade works will start in early 2012 (January), however the timing is dependent on the negotiations with the successful lessee, and undertaking the work in conjunction with any planned work by them.
39. With regards to an exit strategy for the existing tenants, provided in Attachment F, is a proposed Media Release, to be released once the Administration have advised the existing tenants of Council's decision.

Next Steps

40. Once Council has decided the next steps in the process and potentially nominated a successful applicant, the Administration will meet with each existing tenant and advise them of Council's decision.
41. If Council chooses to grant the existing tenants an extended deadline, the Administration will engage Council's lawyers to prepare all documents and correspondence to ensure that the process is managed legally and appropriately. The condition to granting a new short term agreement will be that the existing tenants agree to vacate each leased premises by 31 January 2011.
42. Should Council choose not to grant an extension to the existing tenants, the Administration will continue with the current course of action.
43. Council's Media Release, as adopted, will be released once the discussions have been held with all parties.

44. Depending on Council's choice of preferred confirmed applicant, the CEO and Mark Booth will present the draft lease agreements and lead the negotiations to come to a suitable resolution.
45. A Report will be submitted in January 2012, advising Council of the progress.

Attachment A

8 December 2011

Mr Paul Deb
Chief Executive Officer
City of Burnside
PO Box 9
Glenside SA 5065



**BRM
Holdich**

**Chartered
Accountants**

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Dear Paul,

Confidential - Chelsea Cinema Confirmed Applicants Summary

We refer to the Council decision to resolve that two Applicants be considered as Confirmed Applicants arising from the expression of interest process for the Future Use of the Chelsea Cinema site.

As instructed we have sought further clarification or information from these Confirmed Applicants as part of the negotiation process contemplated in the abovementioned expression of interest process and now summarise the proposals for consideration by Council.

Through the expression of interest process the Confirmed Applicants were able to demonstrate relevant business expertise and the capacity to fulfil their plans, thereby offering Council long term certainty regarding tenure and financial position with respect to the Chelsea Cinema.

For convenience our summary of the position of the Confirmed Applicants is provided under the evaluation criteria headings used within the original expression of interest document, the relevant headings were:

1. Mandatory Criteria

1.1 Economic

1.2 Community

1.3 Heritage

2. Discretionary Criteria

2.1 Financial Return to Council

2.2 Experience in Undertaking Development Activities

2.3 Financial Capacity to undertake the proposed development

2.4 The extent to which the proposed development ensures Chelsea Cinema remains an iconic attraction

Liability limited by a scheme approved under Professional Standards Legislation

BUSINESS · RESOURCE · MANAGEMENT

Our summary of the Confirmed Applicants proposals is detailed in Attachment One.

In conclusion, we are pleased to report that Council is in the fortunate position of having two Confirmed Applicants who are committed to the restoration and conservation of a community asset, at their expense whilst also meeting Council's stated objectives that the Chelsea Cinema:

1. Remains an operational cinema;
2. Is retained in Council's ownership; and
3. Remains an operational asset for the benefit of the community.

Should you require further explanation or clarification of any aspect of the Confirmed Applicants proposals please do not hesitate to contact the undersigned.

Kind regards
BRM HOLDICH



MARK BOOTH

Director

Email: mbooth@brmholdich.com.au

Direct line: 08 8168 8402 or 0414 804 949

Evaluation Criteria	Republic Theatres Pty Ltd	Maras Group
Economic Criteria		
Financial Position and Financial Capacity	<p>The Applicant proposed a commencing rental of \$50,000 inclusive of GST plus outgoings (including Council Rates).</p> <p>The Applicant proposed that rental be increased by CPI each year and be subject to market review at the expiration of each term of the lease.</p> <p>The Applicant provided a letter of comfort from a recognised financial institution.</p>	<p>The Applicant proposed a commencing rental of \$3,000 per annum, indexed to CPI.</p> <p>The Applicant provided a letter of comfort from a recognised financial institution.</p>
Proposed Term and Lease Conditions	<p>The Applicant has proposed that the Lease commence from 1 January 2012.</p> <p>The Applicant has confirmed their commitment to commence the lease period at this time irrespective of whether the current lease removes their air-conditioning system and equipment (as required under the current lease).</p> <p>The Applicant offered an initial term of 5 years with 7 rights of renewal each of 5 years for the Chelsea Cinema and the May Terrace site.</p> <p>The Applicant will accept the following:</p> <p>Chelsea Cinema – initial term of 7 years with 6 rights of renewal each of 5 years. The rental will increase by CPI annually with a market review at the expiration of each period.</p> <p>May Terrace – initial term of 7 years. The Applicant will be granted a further 6 renewal periods on the same terms provided Council has received an acceptable proposal for the development of the site within the initial term.</p>	<p>The Applicant has confirmed the minimum initial term they are seeking is 20 years with three rights of renewal each of 20 years and a fourth renewal term of 19 years, which is a combined total of 99 years.</p> <p>The Application is conditional upon the obtaining of:</p> <ul style="list-style-type: none"> all requisite consents and approvals in relation to the development and upgrade works; finance on acceptable terms and conditions; and a firm and unconditional commitment from Council to make all necessary applications to the Minister and do all things required to assist in having the land at the rear of the cinema converted to Operational Land. <p>Notwithstanding the lease conditions the Applicant is able to commence operations from 1 January 2012 subject to a short term lease arrangement over the cinema and provided the current lessee does not remove equipment essential to the cinema operation.</p>

Evaluation Criteria	Republic Theatres Pty Ltd	Maras Group
	<p>The Applicant is willing to offer the shop tenant an extension of their lease for a minimum one month on the same terms and conditions as currently apply. The Applicant is also willing to offer the tenant of the house an extension of their lease for at least 3 months on the same terms and conditions as currently apply.</p> <p>The Applicant has confirmed the essential lease conditions within the expression of interest document are acceptable in their current form.</p>	<p>The Applicant made the following comments in relation to the proposed essential terms.</p> <p>Clause 1 Retail and Commercial Leases Act - exemption to be sought.</p> <p>Clause 2 Rent - to be paid annually in advance (rather than monthly in arrears).</p> <p>Clause 3 Rent reviews - subject to annual CPI reviews (rather than market review at renewal period).</p> <p>Clause 5 Outgoings - limited to statutory outgoings (excluding land tax), utility charges and insurance.</p> <p>Clause 7 Risk - indemnities subject to usual carve outs, indemnities limited to negligent acts, defaults and breaches by the lessee.</p> <p>Clause 8 Subletting - rights to sub-let without Council consent.</p> <p>Clause 9 Termination Rights - subject to reasonable time to remedy breach or default.</p> <p>Clause 10 Security - no directors guarantee or bank security given investment proposed.</p> <p>Clause 11 Alterations - all development works, alterations and additions to be approved before the lease is unconditional.</p> <p>Clause 13 Fees and charges - will pay GST, stamp duty and registration costs, contribute \$1,000 to lease preparation costs otherwise parties to bear own legal costs. Lease to be in registrable form.</p> <p>Clause 14 Use of Premises - specified to be cinema, cafes and restaurants and for general retail purposes.</p>

Evaluation Criteria	Republic Theatres Pty Ltd	Maras Group
		<p>Clause 15 – Repair and Maintenance – acceptable in principle, but subject to some negotiation.</p> <p>Clause 16 Fit Out – agreed provided Excluded Property removed and damage made good prior to lease commencement.</p>
Relevant Business Experience	<p>The Applicant has relevant experience in the operation of cinema and public entertainment venues.</p>	<p>The Applicant proposes to lease the cinema on a long term lease to an established operator with experience operating a national chain. The cinema operator has confirmed their commitment and provided evidence of their long standing relationship and commercial intent.</p>
Community Criteria	<p>The Applicant proposes to operate the Chelsea Cinema as a cinema and a live entertainment venue.</p> <p>The Applicant has estimated the respective proportion of cinema use to be 80% and the balance of 20% to be live entertainment. The Applicant has also committed to working with the Theatre Organ Society of Australia, South Australia Division Inc. to install a fully working Wurlitzer Theatre Organ, it is estimated that project will take approximately 2 years to complete.</p> <p>The current lessee owns the name “Chelsea Cinema”. The Applicant is considering a change in the name of the cinema to reflect its heritage.</p>	<p>The Applicant proposes to operate the Chelsea Cinema as a cinema as part of development which will include additional cinema screens and incorporate a mix of retail, cafés and restaurants.</p> <p>The current lessee owns the name “Chelsea Cinema”. The Applicant wishes to incorporate the name “Chelsea” into the trading name of the cinema business i.e. Chelsea Palace Nova or something similar.</p>
Proposed use of the Chelsea Cinema		

Evaluation Criteria	Republic Theatres Pty Ltd	Maras Group
Community and Charity Group Use	<p>The Applicant estimated their contribution at \$200,000 per annum. This contribution is based on the following:</p> <ul style="list-style-type: none"> • donations of 2,500 tickets; and • providing approximately 17,500 discounted tickets for group bookings. <p>The Applicant intends to provide flexibility to those community groups and charities that will use the venue by not limiting availability to a particular day or time.</p>	<p>The Applicant estimated their contribution at over \$448,000 per annum based on offering 20,000 seats for community use, with further donations of tickets and substantial discounts on cinema product (tickets and beverages) for fundraising purposes.</p> <p>The cinema would be made available for community use for a morning session every Wednesday (excluding public holidays).</p>
Commitment to meet Conservation Management Plan requirements	<p>The Applicant specifically undertook not to subdivide or destroy the auditorium or any heritage elements of the cinema.</p> <p>The Applicant requested Council be responsible for all exterior work, estimated at \$62,900.</p> <p>The Applicant proposed they will be responsible for all interior work. This reactive maintenance is estimated in the Conservation management Plan at \$5,000 per annum.</p>	<p>The Applicant undertook not to subdivide the auditorium.</p> <p>The Applicant demonstrated their experience in heritage and conservation works.</p> <p>The Applicant has undertaken to complete at their cost the "Medium term Works" contained in the Conservation Management Plan.</p>
Investment in repair, maintenance, conservation and/or restoration above Conservation Management Plan	<p>The Applicant proposed to set aside \$100,000 in restorative elements of the Conservation Management Plan to assist with heritage embellishment and upgrading, this is in addition to any Government contributions which may be available. These works would be undertaken in conjunction with a recognised heritage consultant as part of a master plan of upgrade in visual and function terms.</p> <p>Further there would be an upgrade to the sound system and allied equipment at a cost of approximately \$150,000.</p>	<p>The Applicant stated their commitment to presenting the Chelsea Cinema as a "showcase" Art Deco building, with their intention that it should stand out nationally and internationally. This is to be undertaken at no cost to Council.</p>

Evaluation Criteria	Republic Theatres Pty Ltd	Maras Group
Discretionary Criteria		
Financial Return to Council	The Applicant did not submit a development proposal.	The Applicant will provide a significant financial return to Council through rates generated from the proposed development. The indicative cost of the development is estimated to be between \$12 and \$15 million.
Experience in Undertaking Development Activities	The Applicant did not submit a development proposal.	The Applicant evidenced their considerable experience in undertaking development activities.
Financial Capacity to undertake the proposed development	The Applicant did not submit a development proposal.	The Applicant provided a letter of comfort from a recognised financial institution.
The extent to which the proposed development ensures Chelsea Cinema remains an iconic attraction	The Applicant did not submit a development proposal. However, the Applicant signified their interest in the future development of the May Terrace site. The current lease proposal provides the Applicant with up to 7 years to submit a development proposal which is to Council's satisfaction.	The Applicant addressed concerns over height and the impact of development on the Chelsea Cinema through a presentation of their works in Rundle Street East which showed development assimilation of newer built form and older styles. The Applicant offered to provide Council with concept plans and elevations to show the integration of buildings prior to any lodgement of a Development Application. The Applicant also stated that the Kensington Road uses would be typical of main road retail spaces, above this level would be cinema space.

CONFIDENTIAL

MEMORANDUM OF LEASE

Attachment B

CERTIFICATES OF TITLE BEING LEASED

The whole of the land comprised in Certificate of Title Volume 5899 Folio 223

[Note: This is a draft lease only for the Chelsea Cinema site provided for the purpose of furthering discussion and negotiations between the parties. The terms of the Lease still need to be finalised. The parties will not be bound to this lease unless and until it has been signed by both parties]

ESTATE AND INTEREST

In fee simple

ENCUMBRANCES

Not applicable

LESSOR (Full name and address)

City of Burnside of 401 Greenhill Road, Tusmore South Australia 5065

LESSEE (Full name, address and mode of holding)

[TBC]

TERM OF LEASE

Commencing on [TBC]

Expiring on [TBC]

(together with the right(s) of renewal in clause 13)

RENT AND MANNER OF PAYMENT (OR OTHER CONSIDERATION)

\$(TBC) per annum (exclusive of GST), subject to review.

The Rent is payable in advance by equal and consecutive calendar monthly instalments, the first instalment being payable on the Commencement Date and subsequent instalments being payable on the first day of each month during the Term. The first and last instalments are proportional ones if appropriate.

OPERATIVE CLAUSE ^(a) delete the inapplicable

The Lessor LEASES TO THE LESSEE the land ^(a) ABOVE / ~~HEREINAFTER~~ described and the LESSEE ACCEPTS THIS LEASE of the land for the term and at the rent stipulated, subject to the covenants and conditions expressed ^(a) herein / in Memorandum No. _____ and to the powers and covenants implied by the Real Property Act 1886 (except to the extent that the same are modified or negated below).

DEFINE THE LAND BEING LEASED INCORPORATING THE REQUIRED EASEMENT(S) ETC.

Not applicable

IT IS COVENANTED BY AND BETWEEN THE LESSOR AND THE LESSEE as follows:
(Covenants, where not deposited, to be set forth on insert sheet(s) and securely attached)

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this lease:

Accounting Period means:

- (a) the initial period from the Commencement Date up to and including 30 June next (which unless this lease commences on 1 July is a period of less than 12 months);
- (b) each consecutive period of 12 months commencing 1 July in any year and expiring on 30 June in the next following year; and
- (c) a final period commencing on 1 July and expiring on the last day of this lease (which, unless this lease expires on 30 June, is a period of less than 12 months).

Act means the *Retail and Commercial Leases Act 1995* (SA).

Agreed Consideration means the Rent, Outgoings and all other consideration (whether in money or otherwise) to be paid or provided by the Lessee for any supply or use of the Premises and any goods, services or other things provided by the Lessor under this lease (other than tax payable under clause 18).

Bank Guarantee means an irrevocable and unconditional undertaking acceptable to the Lessor given by an Australian trading bank carrying on business in South Australia to pay the Lessor on demand the amount in Item 9 of Schedule 1 and any addition or replacement to it under clause 19.

Business Day means a day which is not a Saturday, Sunday or public holiday in Adelaide.

Commencement Date means the commencement date described in Item 2 of Schedule 1.

CPI means the consumer price index published by the Australian Bureau of Statistics for All Groups (Adelaide) or the index which replaces it under clause 5.3.

Current CPI means, for a CPI Review Date, the CPI number for the quarter ending immediately before that CPI Review Date.

Current Market Rent means the best rent that can be obtained for the Premises in an open market by a willing but not anxious lessor with or without vacant possession and on the following conditions:

- (a) on the terms of this lease for the whole of the Term (and not just the balance of the Term);
- (b) on the basis that the Lessee has complied with all its obligations under this lease;
- (c) not taking into account any damage or destruction to the Premises and not taking into account any resulting suspension or abatement of Rent;

- (d) not taking into account any disturbance or nuisance to the Lessee's use of the Premises caused by any act or neglect of the Lessor or any adjoining owner or occupier;
- (e) not taking into account any improvements or fixtures erected or installed at the Lessee's expense which the Lessee is permitted to remove at the end of this lease;
- (f) taking into account any increase in value of the Premises arising from any permanent improvements on the Premises at the expense of either the Lessee or the Lessor and which the Lessee is not entitled to remove;
- (g) not taking into account any goodwill attributable to the Premises by reason of any trade, business or actions carried on by the Lessee; and
- (h) not taking into account any cash, premium, payment, abatement, allowance or other incentive paid, offered or allowed in respect of this lease or being offered or given in respect of comparable premises to induce lessees to take a lease of or remain in such comparable premises.

Default Rate means the rate which is two per centum (2%) per annum greater than the published annual rate of interest charged from time to time by Westpac Banking Corporation on overdraft facilities of more than \$100,000.00 and if there is more than one rate published the highest of those rates.

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.

Fixed Amount means a specified amount nominated as a Review Method.

Guarantor means each person (if any) named in Item 10 of Schedule 1 and any other person who provides a guarantee of the Lessee's obligations under this lease.

GST has the meaning given to that term in the GST Legislation.

GST Legislation means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any similar or ancillary legislation.

GST Rate means 10% or the rate of GST imposed from time to time under the GST Legislation.

Institute means the South Australian Division of the Australian Property Institute.

Initial Term means the initial term of this lease commencing on the Commencement Date and described in Item 2 of Schedule 1.

Legislation includes any relevant Act of Parliament (whether State or Federal) and any regulation or by-law including by-laws issued by any local government body or authority.

Lessee means the party described as 'Lessee' on the lease panel form and where the context permits includes the employees, contractors, customers, agents and other invitees of the Lessee.

Lessee's Equipment means any and all fixtures and fittings and other equipment installed in or brought on to or kept in the Premises by the Lessee.

Lessor means the party described as 'Lessor' on the lease panel form and where the context permits includes the Manager (if any) and the employees, contractors, agents and other invitees of the Lessor and the Manager.

Lessor's Equipment means any and all fixtures, fittings, plant, equipment, services, chattels and other goods situated at any time in or on the Premises or available for use by the Lessee.

Manager means any manager appointed by the Lessor under clause 11.8.

Market Review means a review of Rent to Current Market Rent as set out in clause 5.5.

Network Charge means the costs payable from time to time to the operator of the external electricity distribution network to which the Premises are connected on account of the use of the network to deliver electricity to the Premises.

Outgoings means the total of all amounts paid or payable by the Lessor in connection with the ownership, management, administration and operation of the Premises including:

- (a) the cost of insuring the Premises including all improvements;
- (b) the cost of insuring the Lessor against public risk;
- (c) the amount of any excess or deductible not paid or excluded under any insurance policy taken out by the Lessor;
- (d) the cost of insuring the Lessor against loss of rent and other consequential loss for a period not exceeding 12 months;
- (e) all costs (including wages and other usual employment on-costs) of the management, control and administration of the Premises;
- (f) all costs of the Lessor in connection with the maintenance, repair, replacement and renovation of the Premises from time to time;
- (g) all costs of the Lessor in connection with cleaning, lighting, heating and air-conditioning the Premises;
- (h) all costs of the Lessor in connection with preparing and providing any audited statement which is required to be prepared and/or provided under this lease or by Legislation; and
- (i) contributions to any sinking fund established under clause 6.4.

Payment Date means the Commencement Date and the first day of each month during the Term.

Permitted Use means the use described in Item 6 of Schedule 1.

Premises means the premises described in Item 1 of Schedule 1 including all present and future improvements thereon and the Lessor's Equipment.

Previous CPI means, for a CPI Review Date, the CPI number for the quarter ending immediately before the last Review Date (or if there has not been a review, the Commencement Date).

Rates and Taxes means all present and future rates, charges, levies, assessments, duty and charges of any Statutory Authority, department or authority having the power to raise or levy any such amounts in respect of the use, ownership or occupation of the Premises and includes water and sewer charges, council rates, emergency services levy and, subject to the Act, land tax (on a single holding basis).

Renewal Term means the term (if any) of renewal or extension granted under this lease.

Rent means the rent described in Item 4 of Schedule 1.

Review Date means each date described in Item 5 of Schedule 1.

Review Method means the relevant method of rent review in Item 5 of Schedule 1 for any Review Date.

Statutory Authorities means any government authorities or authorities created by or under any relevant Legislation.

Statutory Requirements means all relevant Legislation and all lawful conditions, requirements, notices and directives issued or applicable under any such Legislation or by any Statutory Authorities.

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.

Valuer means a qualified valuer appointed to make a determination under this lease and:

- (a) who is appointed by agreement of the Lessor and the Lessee or, failing agreement within 14 days of either notifying the other of the requirement for such appointment, at the request of either the Lessor or the Lessee, by the President or acting President of the Institute;
- (b) who has practised as a valuer with a minimum of five years relevant experience; and
- (c) who acts as an expert and not as an arbitrator.

Yearly Amounts means the aggregate of the Rent, Outgoings and any other moneys payable by the Lessee during the Term.

1.2 Interpretation

In this lease, unless the context otherwise requires:

- 1.2.1 headings do not affect interpretation;
- 1.2.2 singular includes plural and plural includes singular;
- 1.2.3 words of one gender include any gender;
- 1.2.4 a reference to a party includes its executors, administrators, successors and permitted assigns;
- 1.2.5 a reference to a person includes a partnership, corporation, association, government body and any other entity;
- 1.2.6 a reference to this lease includes any schedules and annexures to this lease;
- 1.2.7 a reference to any document (including this lease) is to that document as varied, novated, ratified or replaced from time to time;
- 1.2.8 an agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- 1.2.9 an agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- 1.2.10 a reference to legislation includes any amendment to it, any legislation substituted for it, and any subordinate legislation made under it;
- 1.2.11 a provision is not construed against a party only because that party drafted it;
- 1.2.12 an unenforceable provision or part of a provision may be severed, and the remainder of this lease continues in force;
- 1.2.13 the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions;
- 1.2.14 an expression defined in the *Corporations Act 2001* (Cth) has the meaning given by that act at the date of this lease;
- 1.2.15 the covenants and powers implied in leases by virtue of sections 124 and 125 of the *Real Property Act 1886* apply and are implied in this lease unless they are expressly or impliedly excluded or modified; and
- 1.2.16 the special conditions in **Error! Reference source not found.** prevail over the terms in the body of this lease to the extent of any inconsistency.

1.3 Retail and Commercial Leases Act

If the Act applies to this lease:

- 1.3.1 this lease must be interpreted subject to the Act;

- 1.3.2 any right, power or remedy of the Lessor or obligation or liability of the Lessee that is affected by the Act is unenforceable or void but only to the extent that it is expressly made unenforceable or void by the Act.

1.4 Background

The Background forms part of this lease and is correct.

2. GRANT OF LEASE

The Lessor grants and the Lessee accepts a lease of the Premises for the Term as set out in this lease.

3. TERM LESS THAN FIVE YEARS

- 3.1 This clause only has effect where:

- 3.1.1 the Act applies to this lease; and

- 3.1.2 the Term is less than five years.

- 3.2 The Lessor and the Lessee acknowledge and agree that:

- 3.2.1 the Term is less than five years; and

- 3.2.2 section 20B of the Act does not apply to this lease for the Term (including any holding over period which exceeds six months).

- 3.3 The Lessee acknowledges that:

- 3.3.1 the Lessee has received independent legal advice explaining the effect of section 20B of the Act and how it would apply if this lease did not contain this clause;

- 3.3.2 the Lessee was not acting under coercion or undue influence in requesting or consenting to this clause; and

- 3.3.3 the Lessee has given assurances to the Lessee's lawyer that the Lessee was not acting under coercion or undue influence in requesting or consenting to this clause.

4. RENT

4.1 Payment of Rent

The Lessee must pay the Rent by equal instalments in advance on each Payment Date.

4.2 Instalment

If a rent instalment period is less than a month, the instalment for that period is calculated at a daily rate based on the number of days in the month in which that period begins and the monthly instalment which would have been payable for a full month.

5. RENT REVIEWS

5.1 Fixed Amount review

Where the Review Method for any Review Date is a Fixed Amount, the Rent on and from that Review Date is calculated as follows:

$$R_2 = R_1 \times (1 + F)$$

Where:

R_2 is the Rent on and from the Review Date;

R_1 is the Rent immediately before the Review Date (disregarding any abatements, incentives or reductions); and

F is the rate set out in Item 5 of Schedule 1 in relation to that Review Date.

5.2 CPI review

Where the Review Method for any Review Date is CPI, the Rent on and from that Review Date is calculated as follows:

$$R_2 = R_1 \times \frac{\text{Current CPI}}{\text{Previous CPI}}$$

Where:

R_2 is the Rent on and from the Review Date; and

R_1 is the Rent immediately before the Review Date (disregarding any abatements, incentives or reductions).

5.3 Change to CPI

If the CPI is no longer published, either party may ask the President of the Institute to nominate an index which reflects the rate of price change in the area and group for the CPI and 'CPI' then means that index. Each party must pay one half of the President's costs for nominating an index.

5.4 Market Review

Where the Review Method for any Review Date is a Market Review, then the Rent must be reviewed to the Current Market Rent.

5.5 Current Market Rent

5.5.1 The Lessor may at any time give the Lessee written notice stating the Lessor's assessment of the Current Market Rent.

5.5.2 The Rent from and including the relevant Review Date is the amount stated in the Lessor's notice under clause 5.5.1 unless the Lessee gives the Lessor written notice disagreeing with that amount (**Objection**) within 14 days after the Lessor's notice.

- 5.5.3 If the Lessee gives the Lessor an Objection, then the Rent must be determined by a Valuer.
- 5.5.4 The Valuer must determine the Current Market Rent under this clause.
- 5.5.5 The Lessor and the Lessee may make written submissions to the Valuer within 14 days after the Valuer is appointed.
- 5.5.6 Each party must forward to the other a copy of all written material provided to the Valuer when it is provided to the Valuer.
- 5.5.7 Within 14 days after receiving those written materials, a party may give written comments to the Valuer on the other party's written submissions.
- 5.5.8 The Valuer must make the determination in writing within 60 days after appointment, giving detailed reasons and specifying the matters required to be taken into account under this lease). The determination is final and binding.
- 5.5.9 If the Valuer's determination is more than the Lessor's assessment of the Current Market Value, the Lessee must pay all the costs of the valuation. In all other cases, the costs of the valuation must be shared equally between the Lessor and Lessee.

5.6 Rent pending determination

- 5.6.1 The Rent may be reviewed at any time from a Review Date even if the review is instituted after that Review Date.
- 5.6.2 If the Rent to apply on and from a Review Date is not agreed or determined by that Review Date, the Lessee must continue to pay instalments of Rent at the rate that applied before the relevant Review Date until the Rent is determined.

5.7 Adjustment once Rent determined

Once the Rent to apply on and from a Review Date is determined, the Lessee must pay any shortfall, and the Lessor must allow any adjustment for overpayment at the next Payment Date.

5.8 No decrease in Rent

Subject to the Act, the Rent will not decrease on a Review Date.

5.9 Other review

Subject to the Act, the Lessor and Lessee may negotiate and agree a Rent to apply from a Review Date without following this clause.

6. RATES AND TAXES AND OUTGOINGS

6.1 Liability for Rates and Taxes

- 6.1.1 The Lessee must pay or reimburse the Lessor all Rates and Taxes levied, assessed or charged in respect of the Premises or upon the owner or occupier of the Premises.
- 6.1.2 The Rates and Taxes must be adjusted between the Lessor and the Lessee as at the Commencement Date and the end or termination date of this lease.

6.2 Liability for Outgoings

- 6.2.1 The Lessee must pay or reimburse the Lessor all Outgoings (including Rates and Taxes) levied, assessed or charged in respect of the Premises or upon the owner or occupier of the Premises.
- 6.2.2 The Outgoings must be adjusted between the Lessor and the Lessee as at the Commencement Date and the end or termination date of this lease.

6.3 Payments, estimates and adjustments

- 6.3.1 Subject to the Act, the Lessee must (if required) pay monthly instalments on account of Outgoings in advance on each Payment Date.
- 6.3.2 Not later than one month before the commencement of each Accounting Period, the Lessor must provide to the Lessee a written estimate of Outgoings for that Accounting Period and the amount that the Lessee must contribute towards those Outgoings.
- 6.3.3 At the request of the Lessee (acting reasonably), the Lessor must give the Lessee information and explanations about Outgoings expenditure to which the Lessee is required to contribute and how the Lessee's contribution is determined.
- 6.3.4 Not later than three months after the end of each Accounting Period, the Lessor must provide to the Lessee a statement in relation to Outgoings. The statement must:
 - 6.3.4.1 contain a statement of all Outgoings expenditure by the Lessor in the relevant Accounting Period towards which the Lessee is required to contribute; and
 - 6.3.4.2 be in a form that allows the Lessee to compare actual Outgoings expenditure with the estimates given by the Lessor.
- 6.3.5 There must be an adjustment between the Lessor and the Lessee to take account of any underpayment or overpayment by the Lessee in respect of Outgoings. This adjustment (if any is due) must be made on the next Payment Date.

6.4 Sinking fund

- 6.4.1 The Lessor may establish a sinking fund for major repairs or maintenance to the Premises.
- 6.4.2 The Lessor must advise the Lessee in writing of the establishment of any such sinking fund and of the contribution to be made by the Lessee.
- 6.4.3 The following provisions apply to any sinking fund:
 - 6.4.3.1 the Lessor must establish a separate fund for such moneys and all monies paid by the Lessee in this regard must be paid into that fund;
 - 6.4.3.2 that fund or so much of the balance standing to the credit of that fund as remains unexpended from time to time for a purpose for which the fund was established must be held by the Lessor in a separate interest bearing account;
 - 6.4.3.3 any amounts paid by the Lessee for credit of that fund, and the net interest earned by the Lessor on that fund, must not be applied by the Lessor for any purpose other than that for which the fund was established.

6.5 Power and other utilities

- 6.5.1 The Lessee must pay when due the full amount of all accounts, invoices, assessments and charges with regard to the consumption, use or supply of telephone, light, electricity, gas, and any and all other services and utilities supplied to or used from the Premises.
- 6.5.2 If there is no separate meter for a service or utility used on or from the Premises and if the Lessor so requires, then the Lessee must install the meter at its own cost.
- 6.5.3 Without limiting this subclause, the Lessee must comply with the *Electricity (General) Regulations 1997 (SA)* and any other applicable electricity laws.

7. USE OF PREMISES

7.1 Permitted Use

The Lessee may use the Premises only for the Permitted Use and must not use or allow the Premises to be used for any other use, without the Lessor's consent.

7.2 Operation of Lessee's business

The Lessee must (if applicable):

- 7.2.1 keep the Premises fully stocked and staffed, and operate the Lessee's business with due diligence and efficiency in a proper and businesslike manner; and

- 7.2.2 keep the Premises open for trade during normal business hours from the Premises and (where permitted by law) during the days and hours from time to time notified by the Lessor to the Lessee as the designated operating hours for the Premises.

7.3 Use by Community and Charity Groups

- 7.3.1 The Lessee must promote and permit the continued use of the Premises by community and charity groups approved by the Lessor for fundraising purposes.

- 7.3.2 The Lessee must make the Premises available for use by the charitable or community groups approved by the Lessor on:

- 7.3.2.1 [TBC]

- at no cost to the Lessor or the charitable or community organisation.

7.4 Offensive activities

The Lessee must:

- 7.4.1 not carry on any offensive or dangerous activities on or from the Premises;
- 7.4.2 not create a nuisance or disturbance for the Lessor or for the owners or occupiers of any adjoining property; and
- 7.4.3 ensure at all times that activities conducted on or from the Premises do not discredit the Lessor.

7.5 Use of facilities

- 7.5.1 The Lessee must ensure that all facilities provided by the Lessor within the Premises are used carefully and responsibly for their intended purpose and in accordance with any directions given by the Lessor from time to time.
- 7.5.2 The Lessee must repair or correct any damage or malfunction which results from any misuse or abuse of the facilities by the Lessee.

7.6 Statutory Requirements

The Lessee must comply with all Statutory Requirements (including the *Occupational Health Safety and Welfare Act 1986 (SA)*) relating to:

- 7.6.1 the Lessee's use and occupation of the Premises;
- 7.6.2 the nature of the business conducted on the Premises by the Lessee and the Permitted Use;
- 7.6.3 the number and sex of staff or others employed to work in the Premises; or
- 7.6.4 any deliberate or negligent act or omission of the Lessee;

including any requirements for building works or modifications to the Premises (whether structural or otherwise).

7.7 Alcohol and Gaming

7.7.1 Unless the Lessee first obtains the written consent of the Lessor, the Lessee must not apply for:

7.7.1.1 a liquor licence under the *Liquor Licensing Act 1997*; or

7.7.1.2 a gaming machine licence under the *Gaming Machines Act 1992*.

7.7.2 If the Lessee obtains a licence (or licences) under this clause, the Lessee must not do (or fail to do) or allow any of its employees agents contractors, licensees or invitees to (or fail to):

7.7.2.1 do anything that is in breach of the *Liquor Licensing Act 1997* and/or the *Gaming Machines Act 1992* (as the case may be) or of the conditions of the relevant licence; or

7.7.2.2 do anything that may result in the relevant licence being revoked or suspended;

7.7.2.3 assign the licence;

7.7.2.4 apply to remove the licence;

7.7.2.5 allow a licence to be granted to another person in respect of the Premises or any part of the Premises; or

7.7.2.6 apply to vary or revoke any conditions of the licence.

7.7.3 At or before the expiry or early termination of this Lease, the Lessee must:

7.7.3.1 give any notices the Lessor requires to renew or assign the licence;

7.7.3.2 allow those notices to be affixed as and for the period required by the *Liquor Licensing Act 1997* and/or the *Gaming Machines Act 1992* as the case may be;

7.7.3.3 assign the licence to the Lessor or the Lessor's nominees if required to do so by the Lessor; and

do anything else that may be required to affect the renewal or assignment of the licence.

7.8 Signs

The Lessee must not place any sign or advertisement on the outside of the Premises, or inside the Premises (if it can be seen from outside of the Premises), except a sign or advertisement promoting the name and nature of the business conducted on the Premises by the Lessee and which:

- 7.8.1 is approved (in writing) by the Lessor; and
- 7.8.2 complies with any relevant Statutory Requirements.

7.9 Displays, fixtures and fittings

The Lessee must (if applicable):

- 7.9.1 install and maintain adequate displays in the windows of the Premises and keep the displays well lit;
- 7.9.2 keep the Premises fitted out with machinery, fixtures and fittings (which must be new unless the Lessor's consent is obtained) required to adequately carry on the Permitted Use;
- 7.9.3 keep the displays, machinery, fixtures and fittings in good repair and condition; and
- 7.9.4 not display goods or merchandise outside the Premises without the Lessor's consent.

7.10 Dangerous equipment and installations

The Lessee may only install or use within the Premises equipment which is reasonably necessary for, and which is normally used in connection with, businesses of the type conducted on the Premises by the Lessee in accordance with the Permitted Use and must not install or bring onto the Premises:

- 7.10.1 any electrical, gas powered or other machinery or equipment which is not designed for use in such premises and which may pose a danger, risk or hazard to the Premises or any people;
- 7.10.2 any chemicals or other dangerous substances which by their nature, or their volume, may pose a danger, risk or hazard to the Premises or any people; or
- 7.10.3 any heavy equipment or items which may damage the Premises.

7.11 Fire precautions

The Lessee must:

- 7.11.1 comply with all requirements and directives of the Lessor with regard to fire safety systems and procedures including fire evacuation drills and other procedures; and
- 7.11.2 comply with all Statutory Requirements relating to fire safety and procedures including any structural works or modifications or other building works which are required as a result of:
 - 7.11.2.1 the Lessee's use or occupation of the Premises;
 - 7.11.2.2 the nature of the business conducted on the Premises by the Lessee;

7.11.2.3 the number and sex of the staff or others employed to work on the Premises; or

7.11.2.4 any deliberate or negligent act or omission of the Lessee.

7.12 Notice of defect

The Lessee must:

7.12.1 give the Lessor prompt notice of any circumstance or event which the Lessee should reasonably be aware might cause danger, risk or hazard to the Premises or to any person in the Premises; and

7.12.2 if required by the Lessor, promptly rectify any defect or want of repair to make the Premises safe from any danger, risk or hazard.

7.13 Security

The Lessee must keep the Premises securely locked at all times when the Premises are not occupied or open for business and must provide a key to the Premises to the Lessor (or if the Lessor has engaged a Manager, then to the Manager) to be used only in emergencies for the purpose of safety and preservation of property.

7.14 No warranty

The Lessor makes no warranty or representation regarding:

7.14.1 the suitability of the Premises (structural or otherwise) for the Permitted Use or any other purpose and the Lessee occupies the Premises at its own risk; and

7.14.2 the exclusivity or otherwise of the Permitted Use for the Lessee.

8. INSURANCE

8.1 Lessee must insure

The Lessee must keep current during the Term (in connection with the Premises and the Lessee's Equipment):

8.1.1 public risk insurance for at least the amount in Item 7 of Schedule 1 (or any other amount the Lessor reasonably requires) for each claim;

8.1.2 plate glass insurance against usual risks;

8.1.3 all insurance in respect of the Lessee's Equipment for its full replacement value; and

8.1.4 other insurances required by any Statutory Requirement or which the Lessor reasonably requires for at least the amounts the Lessor reasonably requires.

8.2 Requirements for policies

Each policy must:

- 8.2.1 be with an insurer and on terms approved by the Lessor;
- 8.2.2 be in the name of the Lessee and note the interest of the Lessor and any other person the Lessor requires;
- 8.2.3 have no limit on the number of claims that can be made under it;
- 8.2.4 cover events occurring during the policy's currency regardless of when claims are made; and
- 8.2.5 note that despite any similar policies of the Lessor, the Lessee's policies will be primary policies.

8.3 Evidence of insurance

On or before the Commencement Date, the Lessee must give the Lessor certificates evidencing the currency of each policy. During the Term the Lessee must:

- 8.3.1 pay each premium before it is due for payment;
- 8.3.2 give the Lessor certificates of currency each year when the policies are renewed and at other times the Lessor requests;
- 8.3.3 not vary or allow to lapse any insurance policy without the Lessor's consent;
- 8.3.4 notify the Lessor immediately if a policy is cancelled or if an event occurs which could prejudice or give rise to a claim under a policy.

8.4 Insurance affected

- 8.4.1 The Lessee must not do anything which may:
 - 8.4.1.1 prejudice any insurance of the Premises; or
 - 8.4.1.2 increase the premium for that insurance.
- 8.4.2 If the Lessee does anything (with or without the Lessor's consent) that increases the premium of any insurance the Lessor has in connection with the Premises, the Lessee must pay the amount of that increase to the Lessor on demand.

9. REPAIR AND MAINTENANCE

9.1 Repair

- 9.1.1 The Lessee must keep and maintain the Premises and the Lessee's Equipment in good repair, order and condition (notwithstanding the condition of the Premises at the Commencement Date).
- 9.1.2 If the Lessor so requires, the Lessee must promptly repair damage to the Premises caused or contributed to by the act, omission, negligence or default of the Lessee.

9.2 Maintain and replace

The Lessee must maintain items in or attached to the Premises, and, if damaged or worn, repair them or replace them with items that are of a high quality of workmanship and that comply with the requirements of clause 9.7.

9.3 Alterations by Lessee

- 9.3.1 The Lessee must not carry out any alterations or additions to the Premises without the Lessor's consent and the consent of the Minister for the time responsible for the administration of the *Heritage Places Act 1993 (SA)*.
- 9.3.2 The Lessee must provide full details of the proposed alterations and additions to the Lessor.
- 9.3.3 The Lessor may impose any conditions it considers necessary if it gives its approval, including requiring the Lessee to obtain the Lessor's consent to any agreements that the Lessee enters into in relation to the alterations or additions.
- 9.3.4 The Lessee must carry out any approved alterations and additions:
 - 9.3.4.1 in a proper and workmanlike manner;
 - 9.3.4.2 in accordance with the conditions imposed by the Lessor and with the approvals made by Lessor in its capacity as lessor under this lease;
 - 9.3.4.3 in accordance with all Statutory Requirements; and
 - 9.3.4.4 in a way to minimise disturbance to others.
- 9.3.5 Unless otherwise agreed in writing between the parties, all alterations and additions to the Premises made pursuant to this clause become the property of the Lessor.
- 9.3.6 The Lessee must pay all of the Lessor's costs (including consultant's costs and legal costs) as a result of considering the Lessee's proposed alterations and additions (whether or not that consent is granted).

9.4 Refurbishment, re-fitting and redecoration

- 9.4.1 The Lessee must refurbish, re-fit and redecorate the Premises (**Refurbishment**) on or before each date specified in Item 8 of Schedule 1 to the following specification:
 - 9.4.1.1 clean and repair all surfaces to be redecorated;
 - 9.4.1.2 paint (with at least two coats) or wallpaper, stain, varnish or polish each surface to be redecorated according to the previous treatment of that surface; and
 - 9.4.1.3 replace the shop front, signage, floor coverings, ceilings, lighting and fixtures and fittings with new items.

- 9.4.2 The Lessee must carry out the Refurbishment to the standard of the Premises when they were last refurbished with the Lessor's approval, or if they have not been so refurbished, to their standard at the Commencement Date.

9.5 Cleaning

The Lessee must:

- 9.5.1 keep the Premises clean and tidy; and
- 9.5.2 keep the Premises free of vermin, insects and other pests.

9.6 Structural work

Despite clauses 9.1 and 9.2, the Lessee is not required to carry out any structural work to the Premises unless that work is required as a result of:

- 9.6.1 the Lessee's use or occupation of the Premises;
- 9.6.2 the nature of the business conducted on the Premises by the Lessee;
- 9.6.3 the number and sex of staff or others employed to work in the Premises; or
- 9.6.4 any deliberate or negligent act or omission of the Lessee.

9.7 Heritage Features

- 9.7.1 The Lessee must ensure that all heritage features of the Premises are maintained for the duration of the Term unless otherwise agreed by both the Lessor and the Minister for the time being administering the *Heritage Places Act 1993(SA)* in writing.
- 9.7.2 Notwithstanding any other provision in this Lease to the contrary, the Lessee must ensure that all maintenance, repairs, upgrades and alterations undertaken at, to or of the Premises are undertaken so as to:
- 9.7.2.1 retain all existing heritage features of the Premises;
- 9.7.2.2 ensure all heritage features of the Premises are maintained to a high standard of quality and authenticity;
- 9.7.2.3 only introduce new features that are in keeping with the heritage features and the overall aesthetics of the Premises; and
- 9.7.2.4 emphasise the Premises are a heritage icon within the local government area of the Lessor.

10. ASSIGNING, SUBLETTING AND CHARGING

10.1 Assignment

The Lessee may, subject to the Act, only assign its interest in this lease if:

- 10.1.1 the proposed assignee does not change the Permitted Use;
- 10.1.2 the proposed assignee is able to meet the financial obligations under this lease;
- 10.1.3 the Lessor reasonably considers that the proposed assignee's business skills are not inferior to those of the Lessee; and
- 10.1.4 the Lessee has complied with the Lessor's procedural requirements for obtaining the Lessor's consent.

10.2 Subletting

The Lessee must not sublet, license, hire out or part with possession of any part of the Premises without the Lessor's consent.

10.3 Charging

- 10.3.1 The Lessee must not mortgage or charge the Lessee's interest in this lease or the Lessee's Equipment without the Lessor's consent.
- 10.3.2 If the Lessor consents to a charge on the Lessee's Equipment then the Lessee must enter into a deed in a form required by the Lessor that ensures the charge is subject to the Lessor's rights under this lease.

10.4 Request for assignment or other arrangements

If the Lessee requests that the Lessor consent to any assignment or parting with possession of the Premises or any part of it, the Lessee must immediately on receipt of a request to do so from the Lessor:

- 10.4.1 pay all arrears of Rent any other moneys outstanding under this lease and remedy all outstanding breaches and pay to the Lessor any sum of money the Lessor reasonably estimates to be required to comply with the Lessee's obligations under this lease and the Lessor's reasonable costs of inspecting the Premises;
- 10.4.2 submit a true copy of all agreements to be entered into in respect of any proposed dealing with this lease or the Premises (including any business sale agreement), and evidence satisfactory to the Lessor that the proposed assignee is respectable responsible solvent and suitable, and information reasonably required by the Lessor about the financial standing and business experience of the proposed assignee;
- 10.4.3 if the proposed assignee is a trustee of a trust, submit a copy of the instrument under which such trust was constituted and the full names addresses and occupations of the beneficiaries of such trust;
- 10.4.4 procure the proposed assignee to submit to the Lessor a business plan setting out the proposed assignee's plans, intentions and projections concerning the business conducted at the Premises (and containing such details and particulars as are reasonably required by the Lessor); and

10.4.5 pay to the Lessor the reasonable costs of and incidental to any inspection of the Premises and enquiries concerning the proposed dealing or the persons concerned in such dealing and of the perusal, preparation, negotiation and stamping of the documents deemed necessary by the Lessor.

10.5 **Direct covenants and guarantees**

If such consent is given, the Lessee must ensure that prior to the date of any assignment the proposed assignee enters into a direct covenant with the Lessor to observe the terms of this lease and furnishes such guarantees of the performance of the proposed assignee's obligations under this lease as the Lessor may reasonably require.

10.6 **Deemed assignment**

If the Lessee is a corporation (not being a company with its shares listed on any Stock Exchange in Australia) or an association, any change in the beneficial ownership of 20% or more of the voting shares in the corporation or any change in the effective control of the corporation or association, is deemed to be an assignment of the Premises requiring the Lessor's consent.

10.7 **Costs**

The Lessee must pay all costs reasonably incurred by the Lessor (including the costs of any consultant or any legal fees) in relation to any dealing, including in considering whether or not to grant any consent to a request by the Lessee.

10.8 **No release**

Subject to the Act, where the Lessor grants consent or is deemed to grant consent to an assignment, the Lessee (that is, the assignor) and any Guarantors are not released or discharged from their current and future obligations and liabilities under this lease.

11. **LESSOR'S OBLIGATIONS AND RIGHTS**

11.1 **Quiet enjoyment**

Subject to the Lessor's rights and to the Lessee complying with the Lessee's obligations under this lease, the Lessee may occupy the Premises during the Term without interference from the Lessor.

11.2 **Right to enter**

The Lessor may (except in an emergency when no notice is required) enter the Premises after giving the Lessee reasonable notice:

11.2.1 to see the state of repair of the Premises;

11.2.2 to do repairs to the Premises or other works which cannot reasonably be done unless the Lessor enters the Premises;

11.2.3 to do anything the Lessor must or may do under this lease or must do under any Legislation or to satisfy the requirements of any Statutory Authority;

11.2.4 to show prospective lessees through the Premises during the last six months of the Term; and

11.2.5 to show prospective purchasers through the Premises.

11.3 Emergencies

In an emergency the Lessor may:

11.3.1 close the Premises; and

11.3.2 prevent the Lessee (and its agents) from entering the Premises.

11.4 Works and restrictions

11.4.1 The Lessor may carry out works on the Premises (including extensions, renovations and refurbishment).

11.4.2 The Lessor must (except in an emergency) take reasonable steps to minimise interference with the Lessee's use and occupation of the Premises.

11.5 Right to deal with Premises

11.5.1 If the Lessor proposes to sub-divide, strata title or community title the Premises, the Lessee must within seven days of receiving the Lessor's request consent to any such application.

11.5.2 The Lessor's request must be accompanied with a lease of the Premises capable of registration following deposit of the strata or community plan on the same terms as this lease (unless otherwise agreed), for the balance of the Initial Term and any Renewal Term, but including a term requiring the Lessee to observe the requirements (including any by-laws or articles) of the strata or community title scheme.

11.6 Lessor may sell

If the Lessor sells the Premises and another person becomes the lessor, the Lessor is released from its obligations under this lease with effect from the date it is no longer lessor.

11.7 Right to rectify

The Lessor may at the Lessee's cost do anything which the Lessee should have done under this lease but which the Lessee has not done or which the Lessor reasonably considers the Lessee has not done properly.

11.8 Management services

The Lessor may appoint a Manager to manage the Premises and any appointed Manager represents the Lessor (unless the Lessee is otherwise notified by the Lessor).

12. DAMAGE OR DESTRUCTION

12.1 Termination for destruction or damage

12.1.1 If the Premises are destroyed or are damaged so that they are unfit for the Lessee's use then, within three months after the damage or destruction occurs, the Lessor must give the Lessee either:

12.1.1.1 a notice terminating this lease (on a date at least one month after the Lessor gives notice); or

12.1.1.2 a notice advising the Lessee that the Lessor intends to repair the Premises so that the Premises are accessible and the Lessee can occupy and use the Premises (**Intention to Repair Notice**).

12.1.2 If the Lessor gives an Intention to Repair Notice but does not carry out the repairs within a reasonable time, the Lessee may give notice to the Lessor that the Lessee intends to end this lease if the Lessor does not make the Premises accessible and fit for use and occupation by the Lessee within a reasonable time (having regard to the nature of the required work) (**Intention to Terminate Notice**).

12.1.3 If the Lessor does not give a notice under this subclause or does not take the action required by the Intention to Terminate Notice, the Lessee may end this lease by giving the Lessor not less than one month's notice.

12.2 Reduction or abatement of Rent

12.2.1 While the Premises are unfit or inaccessible, the Yearly Amounts are reduced unless:

12.2.1.1 the Premises are unfit or inaccessible; or

12.2.1.2 an insurer refuses to pay a claim;

as a result of a deliberate or negligent act or omission of the Lessee.

12.2.2 The level of the reduction (if any) depends on the nature and extent of the damage.

12.2.3 If the level of the reduction (if any) cannot be agreed it must be determined by a Valuer.

12.3 No prejudice

This clause does not prejudice the rights of the Lessor to recover loss and damage from the Lessee if and to the extent that the damage to the Premises is caused or contributed to by any deliberate or negligent act or omission by the Lessee.

13. RENEWAL

13.1 If a right of renewal or first right of renewal is specified in Item 3 of Schedule 1 and the Lessee wishes to exercise that right of renewal, then the Lessee must

give a written notice to the Lessor not less than 6 months and not more than 12 months before the expiry of the Initial Term stating it wishes to renew this lease for the period specified in Item 3 of Schedule 1. If such notice is given, the Lessor must renew this lease for the first Renewal Term on the terms in this lease (except this subclause) commencing immediately after the Initial Term expires.

- 13.2 If a second right of renewal is specified in Item 3 of Schedule 1 and the Lessee wishes to exercise that right of renewal, then the Lessee must give a written notice to the Lessor not less than 6 months and not more than 12 months before the expiry of the Renewal Term stating it wishes to renew this lease for the period specified in Item 3 of Schedule 1. If such notice is given, the Lessor must renew this lease for the second Renewal Term on the terms in this lease (except this subclause and the previous subclause) commencing immediately after the first Renewal Term expires.

- 13.3 The Lessee is not entitled to renew this lease if:

- 13.3.1 the Lessee has been in breach of this lease at any time before giving notice of exercise of the right of renewal;
- 13.3.2 the Lessee is in breach of this lease at the time of giving that notice; or
- 13.3.3 the Lessee is in breach or commits a breach of this lease after giving that notice but before commencement of the Renewal Term.

14. RIGHTS AND OBLIGATIONS ON EXPIRY

14.1 Expiry

This lease comes to an end at midnight on the last day of the Term unless it is terminated earlier by the Lessor or the Lessee under this lease.

14.2 Handover of possession

- 14.2.1 Before this lease comes to an end, the Lessee must:

- 14.2.1.1 remove all of the Lessee's Equipment and repair any damage caused by such removal;
- 14.2.1.2 remove and reinstate any alterations or additions made by the Lessee;
- 14.2.1.3 refurbish the Premises as required under clause 9.4; and
- 14.2.1.4 complete any repairs and maintenance which the Lessee is obliged to carry out under this lease.

- 14.2.2 If it is not practical for the Lessee to undertake and complete these requirements before this lease comes to an end, then such works must be undertaken immediately after this lease comes to an end, but in accordance with the requirements of the Lessor relating to security, access and time for completion.

- 14.2.3 When this lease comes to an end the Lessee must:

14.2.3.1 hand over vacant possession of the Premises in good repair and condition consistent with the requirements of clause 9; and

14.2.3.2 hand over to the Lessor all keys and other security devices for the Premises which the Lessee has in its possession or control.

14.2.4 The Lessee is not relieved of its obligation to comply with this subclause, or to compensate the Lessor for failure to do so, because the Lessor accepts or takes possession of the Premises.

14.3 Abandoned goods

If, when this lease comes to an end, the Lessee leaves any goods or equipment at the Premises, then the Lessor may deal with and dispose of those goods in accordance with the Act.

14.4 Holding over

If, with the Lessor's consent, the Lessee continues to occupy the Premises after the end of this lease, the Lessee does so under a monthly tenancy which:

14.4.1 either party may terminate on one month's notice given at any time; and

14.4.2 is on the same terms as this lease.

15. BREACH

15.1 Payment obligations

15.1.1 The Lessee must make payments due under this lease:

15.1.1.1 without demand (unless otherwise provided);

15.1.1.2 without set-off, counter-claim, withholding or deduction;

15.1.1.3 to the Lessor or as the Lessor directs; and

15.1.1.4 by direct debit or other means directed by the Lessor.

15.1.2 If a Payment Date does not exist, the Lessee must make any payment due on that Payment Date on demand.

15.2 Set off

The Lessor may, by notice to the Lessee, set off any amount due by the Lessee to the Lessor under this lease or otherwise against any amount due by the Lessor to the Lessee under this lease.

15.3 Lessor's rights on breach

15.3.1 The Lessor may come onto the Premises and remedy a breach of this lease without notice:

15.3.1.1 in an emergency; or

15.3.1.2 if the Lessee breaches any provision of this lease and fails to remedy the breach within 14 days after receiving notice requiring it to do so.

15.3.2 The Lessee must pay or reimburse the Lessor on demand for all costs of remedying the breach.

15.4 Breach and re-entry

If:

15.4.1 the Lessee fails to pay a sum of money within seven days after it falls due (although no demand has been made);

15.4.2 the Lessee breaches any other provision of this lease and fails to remedy the breach within 14 days after receiving notice requiring it to do so;

15.4.3 there is any change in the direct or indirect beneficial ownership or control of the Lessee;

15.4.4 the Lessee disposes of the whole or any part of its assets, operations or business other than in the ordinary course of business;

15.4.5 the Lessee ceases to carry on business;

15.4.6 the Lessee ceases to be able to pay its debts as they become due;

15.4.7 any step is taken by a mortgagee to take possession or dispose of the whole or any part of the Lessee's assets, operations or business;

15.4.8 any step is taken to enter into any arrangement between the Lessee and its creditors;

15.4.9 any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person of the whole or any part of the Lessee's assets or business;

15.4.10 the Lessee is deregistered or dissolved or any step is taken by any person towards that;

15.4.11 the Lessee is a partnership and any step is taken to dissolve that partnership;

15.4.12 the Lessee is a natural person and commits an act of bankruptcy;

15.4.13 the Lessee is convicted of an indictable offence (other than a traffic offence);

15.4.14 execution is levied against the Lessee and not discharged within 14 days;

15.4.15 the Premises are unoccupied for one month or more without the Lessor's consent; or

15.4.16 an event described in clauses 15.4.3 - 15.4.14 occurs in respect of a Guarantor;

then despite any other clause of this lease, the Lessor:

15.4.17 may re-enter and repossess the Premises, without prejudice to its other rights; and

15.4.18 is discharged from any claim by or obligation to the Lessee under this lease.

15.5. Rights of Lessor not limited

A power or right of the Lessor under this lease or at law resulting from a breach or repudiation of this lease by the Lessee, or the exercise of such power or right, does not limit the Lessor's powers or rights.

15.6 Repudiation and damages

15.6.1 The following provisions are essential terms of this lease:

15.6.1.1 the obligation to pay Rent;

15.6.1.2 the obligation to pay Rates and Taxes;

15.6.1.3 the obligation to pay Outgoings;

15.6.1.4 the obligation to contribute to the sinking fund;

15.6.1.5 the provisions about additions and alterations to the Premises;

15.6.1.6 the repair, maintenance and refurbishment obligations;

15.6.1.7 the provisions about use of the Premises; and

15.6.1.8 the restriction on assignment, sub-letting, mortgaging and licensing.

15.6.2 The Lessor does not waive the essential nature of an essential term by accepting late payment of Rent or other money or by failing to exercise its rights or by delay in doing so.

15.6.3 Any breach of an essential term by the Lessee is a repudiation of this lease. The Lessor may at any time accept that repudiation, rescinding this lease.

15.6.4 If:

15.6.4.1 the Lessor terminates this lease because of a breach of an essential term by the Lessee; or

15.6.4.2 the Lessee repudiates this lease and the Lessor accepts that repudiation, rescinding this lease;

the Lessee must pay compensation to the Lessor including Rent and other moneys which the Lessor would otherwise have received under this lease for the balance of the Initial Term and any Renewal Term. The Lessor must take reasonable steps to mitigate its losses and to endeavour to lease the Premises at a reasonable rent and on reasonable terms.

15.7 Interest on overdue amounts

The Lessee must pay to the Lessor interest on any overdue amount on demand from when the amount becomes due until it is paid in full. Interest is calculated on outstanding daily balances at the Default Rate.

15.8 Landlord and Tenant Act

A notice under section 10 of the *Landlord and Tenant Act 1936* (SA) must allow 14 days for the Lessee to remedy a breach of this lease if it is capable of remedy and to make reasonable compensation in money to the satisfaction of the Lessor. No period of notice is required in respect of non-payment of Rent.

16. POWER OF ATTORNEY

16.1 Appointment

If the Lessor becomes entitled to re-enter and take possession of the Premises after complying with any relevant statutory provision (of which the statutory declaration of any duly authorised officer or employee of the Lessor or any Manager is conclusive evidence for the purpose of the Registrar General), the Lessee irrevocably appoints the Lessor to be the attorney of the Lessee to execute any documents and perform any acts the Lessor requires to give full effect to the power of re-entry under the *Real Property Act 1886*.

16.2 Ratification

The Lessor may do, execute and perform all things relating to the Premises as fully and effectually as the Lessee could do. The Lessee must ratify and confirm the appointment of and all actions by the Lessor under this clause.

17. INDEMNITY AND RELEASE

17.1 Risk

The Lessee occupies and uses the Premises at the Lessee's risk.

17.2 Indemnity

The Lessee is liable for and must indemnify the Lessor against all actions, liabilities, penalties, claims or demands for any loss, damage, injury or death incurred or suffered directly or indirectly including in connection with:

17.2.1 any act or omission of the Lessee;

- 17.2.2 the overflow or leakage of water or any other harmful agent into or from the Premises;
- 17.2.3 any fire on or from the Premises;
- 17.2.4 loss or damage to property or injury or death to any person caused by the Lessee, the use of the Premises by the Lessee or otherwise relating to the Premises;
- 17.2.5 a breach of this lease by the Lessee; or
- 17.2.6 the Lessee's use or occupation of the Premises.

17.3 Release

The Lessee releases the Lessor from all actions, liabilities, penalties, claims or demands for any damage, loss, injury or death occurring in the Premises except to the extent that they are caused by the Lessor's negligence.

17.4 Indemnities are independent

Each indemnity is independent from the Lessee's other obligations and continues during this lease and after this lease ends. The Lessor may enforce an indemnity before incurring expense.

17.5 Lessor's liability

Despite anything else in this lease, the Lessor is not liable (except to the extent of any negligence of the Lessor) for any loss or damage, and the Lessee has no right to terminate this lease or reduce payments under this lease, for any:

- 17.5.1 water being upon or coming through any roof, skylight or vent of the Premises;
- 17.5.2 acts or negligence of occupants of adjacent buildings or the public.

18. GOODS AND SERVICES TAX

18.1 Agreed consideration

If the Lessor is liable to pay GST in connection with a supply under this lease then:

- 18.1.1 the Agreed Consideration for that supply is exclusive of GST;
- 18.1.2 the Lessor may increase the Agreed Consideration or the relevant part of the Agreed Consideration by the GST Rate; and
- 18.1.3 the Lessee must pay the increased Agreed Consideration on the due date for payment by the Lessee of the Agreed Consideration.

18.2 Tax invoice

Where the Agreed Consideration is increased under this clause, the Lessor must, on or before the date on which the Agreed Consideration is payable, issue a tax invoice to the Lessee.

18.3 Liability for penalties

If the Lessee breaches this clause and as a result the Lessor becomes liable for penalties or interest for late payment of GST, then the Lessee must pay the Lessor on demand an amount equal to the penalties and interest.

19. BANK GUARANTEE

19.1 Issue of Bank Guarantee

If Item 9 of Schedule 1 contains Bank Guarantee details, the Lessee must arrange for the immediate issue of the Bank Guarantee.

19.2 Amount of Bank Guarantee

If the amount of the Bank Guarantee is calculated by reference to monthly instalments of Rent and if required by the Lessor, the Lessee must, immediately following any review or adjustment of the Rent, provide a replacement Bank Guarantee for an amount calculated by reference to the new monthly instalments of Rent (and where appropriate, reasonably estimated by the Lessor).

19.3 Claim on Bank Guarantee

19.3.1 The Lessee must provide the Bank Guarantee and any replacement of it as security for the payment of all moneys from time to time payable by the Lessee pursuant to this lease. If the Lessee is in default under this lease, the Lessor may claim under the Bank Guarantee for all moneys then and subsequently due and payable under this lease and all loss, damage, costs and expenses incurred by the Lessor as a consequence of the default.

19.3.2 The Lessor may claim and the bank must make payment under the Bank Guarantee without reference to the Lessee and notwithstanding any objection, claim or direction by the Lessee to the contrary.

19.4 Deficiency after claim

Whenever the Lessor has recourse to the Bank Guarantee, the Lessor may, by written notice to the Lessee, require the Lessee to reinstate the amount of the Bank Guarantee or provide an additional bank guarantee in relation to the amount of the claim (and any previous claims) made by the Lessor (**Deficiency**). Within seven days of receipt by the Lessee of each notice, the Lessee must:

19.4.1 provide evidence to the Lessor of the reinstatement of the existing Bank Guarantee to its full amount; or

19.4.2 provide to the Lessor an additional bank guarantee equal to the amount of the Deficiency. This clause applies (changed as necessary) to that additional bank guarantee.

19.5 No derogation

The rights of the Lessor under this clause do not derogate from the other rights and remedies available to the Lessor under this lease or at law or in equity in relation to any default of the Lessee.

19.6 Release of Bank Guarantee

Three (3) months after the expiration of the Term and the vacation of the Premises by the Lessee in accordance with this lease, provided the Lessee is not then in default, the Lessor must release the Bank Guarantee to the Lessee.

19.7 Assignment of lease

If the benefit of this lease is assigned by the Lessor to any person, the benefit of the Bank Guarantee extends to and is taken to be assigned to the assignee. The Lessee must do all things necessary to give effect to that assignment including providing a replacement Bank Guarantee in favour of the assignee if requested to do so by the Lessor.

19.8 No limit on claims

The amount of the Bank Guarantee does not limit the amount the Lessor may recover from the Lessee.

20. RULES AND REGULATIONS

20.1 The Lessor may from time to time make such rules and regulations that the Lessor considers necessary for the management, safety, security, care of or cleanliness of the Premises.

20.2 The Lessor reserves the right to amend from time to time the rules and regulations.

20.3 The rules and regulations bind the Lessee when it receives notices of the rules and regulations from the Lessor.

20.4 If there is any inconsistency between this lease and the rules and regulations, then this lease prevails.

20.5 A failure by the Lessee to comply with the rules and regulations is a breach of this lease.

21. NO ABSOLUTE CAVEAT

The Lessee must not lodge or cause or permit to be lodged any absolute caveat over the certificate of title for the Premises.

22. ACKNOWLEDGEMENTS

The Lessee acknowledges and agrees that:

22.1 prior to the Lessor and Lessee entering into negotiations in respect of this lease a copy of the proposed lease was provided to the Lessee;

- 22.2 prior to the execution of this lease by the Lessee, a Disclosure Statement was provided to the Lessee;
- 22.3 prior to the execution of this lease by the Lessee a notice pursuant to section 18 of the Act was served on the Lessee by or on behalf of the Lessor;
- 22.4 the Lessee is not entitled to compensation under section 38 of the Act in respect of a particular occurrence if the likelihood of that occurrence was specifically drawn to the attention of the Lessee in writing before this lease was entered into;
- 22.5 the Lessor does not warrant that the Premises will for the duration of this lease be structurally suitable for the business to be conducted therein by the Lessee.

23. GUARANTEE

23.1 Guarantee and indemnity

In consideration of the Lessor executing this lease at the request of the Guarantor (which request is testified by the Guarantor's execution of this lease) the Guarantor:

- 23.1.1 guarantees to the Lessor the due and punctual payment to the Lessor of all moneys which become due and payable to the Lessor by the Lessee pursuant to this lease and the due and punctual observance and performance of all the Lessee's obligations in this lease; and
- 23.1.2 as a separate and independent liability, indemnifies the Lessor against all loss, damage, costs and expenses suffered or incurred by the Lessor by reason of any breach of this lease by the Lessee.

23.2 Guarantor's covenants

The Guarantor further agrees that:

- 23.2.1 this guarantee and indemnity continues throughout the Term and after the Term expires;
- 23.2.2 any payment made to the Lessor and later avoided by any statutory provision or discounted, refunded or reduced by any subsequent proceedings does not discharge the Guarantor's liability and, in any such event, the Lessor, the Lessee and the Guarantor must be restored to the rights which each would have had if the payment had not been made;
- 23.2.3 the Lessor may proceed against the Guarantor (or any one or more of them) concurrently, before or instead of proceeding against the Lessee without affecting the liability of the Guarantor or the Lessee;
- 23.2.4 the liability of the Guarantor is not prejudiced by the granting of time, credit or any indulgence or concession to the Lessee or by any compounding, compromise, release, absolute or partial discharge (whether by operation of law or otherwise), abandonment, waiver, variation, novation, relinquishment or renewal of any contractual rights, duties, guarantees or indemnities by the Lessee, or by any omission or

neglect or by any other dealing, matter or thing which, but for this provision, could or might operate to prejudice this guarantee and indemnity. This guarantee and indemnity is absolute and unconditional in all circumstances;

- 23.2.5 this guarantee and indemnity is not affected by any laches, acts, omissions or mistakes by the Lessor;
- 23.2.6 until the Lessee has fully performed and observed the Lessee's covenants in this lease and until the Lessor has received in full all moneys due from the Lessee under this lease, the Guarantor is bound by this guarantee and indemnity;
- 23.2.7 this guarantee and indemnity continues to bind the Guarantor notwithstanding:
 - 23.2.7.1 the death, bankruptcy, insolvency or liquidation (as the case may be) of the Lessee or the Guarantor or any one or more of them;
 - 23.2.7.2 any change in the constitution of the Lessor, the Lessee or the Guarantor;
 - 23.2.7.3 the happening of any thing, which under the law relating to sureties would, but for this provision, release the Guarantor from this guarantee and indemnity or discharge this guarantee and indemnity;
 - 23.2.7.4 any part of this lease being severed;
 - 23.2.7.5 any renewal or extension of the Term or any variation to the terms of this lease;
 - 23.2.7.6 any security taken by the Lessor being or becoming void or defective or any loss or impairment of such security;
 - 23.2.7.7 any assignment of this lease by the Lessee or any sub-letting or parting with possession of or control of the Premises with or without the Lessor's consent; or
 - 23.2.7.8 any surrender of this lease by operation of law;
- 23.2.8 if any part of this lease is severed under clause 1.2.12 then the Guarantor is not entitled to rely on or claim the benefit of any such severance;
- 23.2.9 this guarantee and indemnity is a continuing guarantee and indemnity and is not wholly or partially discharged by the payment of any moneys or the performance of any of the Lessee's covenants or any other thing;
- 23.2.10 the liability of the Guarantor is not affected by any collateral rights or obligations which may exist between the Guarantor and the Lessor or between the Guarantor and the Lessee;

23.2.11 the Guarantor waives in favour of the Lessor all rights of the Guarantor against the Lessee;

23.2.12 the Lessor may assign the rights and benefits of the Lessor under this guarantee and indemnity either absolutely or by way of security without the Lessee's or the Guarantor's consent and this guarantee and indemnity is fully enforceable by the assignee;

23.2.13 the Guarantor's liability under this guarantee and indemnity is not affected by:

23.2.13.1 the fact that any other person who was intended to execute this document or otherwise to become a co-surety has not done so or has not done so effectively; or

23.2.13.2 the discharge under statute or any principle of law or equity of any person who is a co-surety.

23.3 Extended operation of guarantee and indemnity

A reference in this clause to 'this lease' is a reference to any tenancy or other right whether legal, equitable or otherwise under which the Lessee occupies or is entitled to occupy the Premises including a tenancy for a fixed term, a periodic tenancy, a tenancy at will or a tenancy at sufferance.

24. MISCELLANEOUS

24.1 Consent

24.1.1 Unless otherwise provided, the Lessor may give (conditionally or unconditionally) or withhold consent or approval in its absolute discretion and all such consents are only effective if given in writing.

24.1.2 The Lessee must pay or reimburse the Lessor all costs paid or incurred (including any fees of any agent, consultant, architect or lawyer) with respect to any application for consent or approval.

24.2 Entire agreement

This lease:

24.2.1 constitutes the entire agreement between the parties about the Premises; and

24.2.2 supersedes any prior understanding, agreement, condition, warranty, indemnity or representation about the Premises.

24.3 Waiver

If the Lessor 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.

24.4 Exercise of power

24.4.1 The failure, delay, relaxation or indulgence by a party in exercising a power or right under this lease is not a waiver of that power or right.

24.4.2 An exercise of a power or right under this lease does not preclude a further exercise of it or the exercise of another right or power.

25. NOTICE

25.1 A notice, demand, consent, approval or communication under this lease (**Notice**) must be in writing, in English and signed by a person authorised by the sender.

25.2 Without excluding any other method, Notice is sufficiently given:

25.2.1 to the Lessee, if left at the Premises, or if the Lessee has vacated the Premises, if posted by pre-paid post to the last known address of the Lessee;

25.2.2 to the Lessor, if posted by pre-paid post to the Manager (if any) at its principal place of business in South Australia or the Lessor at its principal place of business in South Australia (which is taken to be the address stated in this lease unless the Lessee is or ought reasonably be aware that that is not the Lessor's principal place of business at the relevant time).

25.3 Notice given by pre-paid post is deemed to have been given three Business Days after posting.

25.4 If two or more people comprise a party, notice to one is effective Notice to all.

26. COSTS

On request, the Lessee must pay or reimburse to the Lessor:

26.1 any stamp duty payable on this lease;

26.2 if the Lessee has requested that this lease be registered, all government fees for registration of this lease. If a lease plan is required to be prepared and registered before this lease can be registered, then the Lessee must arrange and pay for the preparation and registration of that lease plan;

26.3 one half of all preparatory costs incurred by the Lessor. In this clause, **preparatory costs** has the meaning given by the Act, namely, legal and other expenses incurred by the Lessor in connection with the preparation, negotiation, stamping and registration of this lease including:

26.3.1 fees charged by a mortgagee for producing a Certificate of Title for the land over which this lease is to be registered, or for consenting to this lease; and

26.3.2 the costs of attendances on the Lessee by the Lessor, or a solicitor acting for the Lessor;

- 26.4 all of the legal costs (determined on a solicitor and client basis) incurred by the Lessor in connection with the extension of this lease; and
- 26.5 all legal and other costs incurred by the Lessor in consequence of any actual or threatened breach by the Lessee under this lease or in exercising or enforcing (or attempting to do so) any rights or remedies of the Lessor hereunder or at law or otherwise arising in consequence of any actual or threatened breach by the Lessee.

Schedule 1

Item 1

Premises

The whole of the land comprised in Certificate of Title Volume 5899 Folio 223

Item 2

Initial Term

[TBC]

Item 3

Renewal(s)

[TBC]

Item 4

Rent

\$ [TBC] per annum (exclusive of GST) subject to review pursuant to clause 13

Item 5

Review Dates and Review Methods

Review Date

Review Method

1. [TBC]

[TBC]

2. [TBC]

[TBC]

Item 6

Permitted Use

[TBC]

Item 7

Public risk insurance

\$20,000,000.00

Item 8

Refurbishment

[TBC]

Item 9

Bank Guarantee

[TBC]

Item 10

Guarantors

[TBC]

CONSENTS OF MORTGAGEES AND SECTION 32 DEVELOPMENT ACT 1993 CERTIFICATION

This lease does not contravene section 32 of the Development Act 1993.

DATED

EXECUTION

The common seal of
City of Burnside
was affixed in the presence of:

.....
Signature of Mayor

.....
Signature of Chief Executive Officer/City Manager

.....
Signature of the LESSEE

.....
Signature of WITNESS – Signed in my presence by
the LESSEE who is either personally known to me
or has satisfied me as to his or her identity. A
penalty of up to \$2000 or 6 months imprisonment
applies to improper witnessing.*

.....
Print Full name of Witness (BLOCK LETTERS)

.....
Address of Witness

.....
Business Hours Telephone Number

* NB: A penalty of up to \$2000 or 6 months imprisonment applies for improper witnessing.

CONFIDENTIAL

LANDS TITLES REGISTRATION
OFFICE
SOUTH AUSTRALIA

MEMORANDUM OF LEASE

FORM APPROVED BY THE REGISTRAR-GENERAL

**BELOW THIS LINE FOR OFFICE &
STAMP DUTY PURPOSES ONLY**

Prefix
L
Series No.

BELOW THIS LINE FOR AGENT USE ONLY

CERTIFIED CORRECT FOR THE PURPOSES
OF THE REAL PROPERTY ACT 1886

Solicitor/Registered Conveyancer/Lessee

AGENT CODE

Lodged by: **Norman Waterhouse** **NWAM**
273926\LXG01948587

Correction to: **Norman Waterhouse** **NWAM**
273926\LXG01948587

TITLES, CROWN LEASES, DECLARATIONS ETC. LODGED WITH
INSTRUMENT (TO BE FILLED IN BY PERSON LODGING)

1.
2.
3.
4.

PLEASE ISSUE NEW CERTIFICATE(S) OF TITLE AS FOLLOWS

1.
2.
3.
4.

DELIVERY INSTRUCTIONS (Agent to complete)
PLEASE DELIVER THE FOLLOWING ITEM(S) TO THE
UNDERMENTIONED AGENT(S)

ITEM(S)	AGENT CODE

CORRECTION	PASSED
REGISTERED	
REGISTRAR-GENERAL	

CONFIDENTIAL

MEMORANDUM OF LEASE

L1

Attachment C

CERTIFICATES OF TITLE BEING LEASED

The whole of the land comprised in Certificate of Title Volume 5701 Folio 749.

[Note: This is a draft lease only for the 39 May Terrace site provided for the purpose of furthering discussion and negotiations between the parties. The terms of the Lease still need to be finalised. The parties will not be bound to this lease unless and until it has been signed by both parties]

ESTATE AND INTEREST

In fee simple

ENCUMBRANCES

Not applicable

LESSOR (Full name and address)

City of Burnside of 401 Greenhill Road, Tasmore South Australia 5065

LESSEE (Full name, address and mode of holding)

[TBC]

TERM OF LEASE

Commencing on **[TBC]**

Expiring on **[TBC]**

(together with the right(s) of renewal in clause 13)

CONFIDENTIAL

Page 2 of 37

RENT AND MANNER OF PAYMENT (OR OTHER CONSIDERATION)

\$(TBC) per annum (exclusive of GST), subject to review.

The Rent is payable in advance by equal and consecutive calendar monthly instalments, the first instalment being payable on the Commencement Date and subsequent instalments being payable on the first day of each month during the Term. The first and last instalments are proportional ones if appropriate.

OPERATIVE CLAUSE ^(a) delete the inapplicable

The Lessor LEASES TO THE LESSEE the land ^(a) ABOVE / ~~HEREINAFTER~~ described and the LESSEE ACCEPTS THIS LEASE of the land for the term and at the rent stipulated, subject to the covenants and conditions expressed ^(a) herein / in Memorandum No. _____ and to the powers and covenants implied by the Real Property Act 1886 (except to the extent that the same are modified or negated below).

DEFINE THE LAND BEING LEASED INCORPORATING THE REQUIRED EASEMENT(S) ETC.

Not applicable

IT IS COVENANTED BY AND BETWEEN THE LESSOR AND THE LESSEE as follows:
(Covenants, where not deposited, to be set forth on insert sheet(s) and securely attached)

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this lease:

Accounting Period means:

- (a) the initial period from the Commencement Date up to and including 30 June next (which unless this lease commences on 1 July is a period of less than 12 months);
- (b) each consecutive period of 12 months commencing 1 July in any year and expiring on 30 June in the next following year; and
- (c) a final period commencing on 1 July and expiring on the last day of this lease (which, unless this lease expires on 30 June, is a period of less than 12 months).

Act means the *Retail and Commercial Leases Act 1995* (SA).

Agreed Consideration means the Rent, Outgoings and all other consideration (whether in money or otherwise) to be paid or provided by the Lessee for any supply or use of the Premises and any goods, services or other things provided by the Lessor under this lease (other than tax payable under clause 18).

Bank Guarantee means an irrevocable and unconditional undertaking acceptable to the Lessor given by an Australian trading bank carrying on business in South Australia to pay the Lessor on demand the amount in Item 9 of Schedule 1 and any addition or replacement to it under clause 19.

Business Day means a day which is not a Saturday, Sunday or public holiday in Adelaide.

Commencement Date means the commencement date described in Item 2 of Schedule 1.

CPI means the consumer price index published by the Australian Bureau of Statistics for All Groups (Adelaide) or the index which replaces it under clause 5.3.

Current CPI means, for a CPI Review Date, the CPI number for the quarter ending immediately before that CPI Review Date.

Current Market Rent means the best rent that can be obtained for the Premises in an open market by a willing but not anxious lessor with or without vacant possession and on the following conditions:

- (a) on the terms of this lease for the whole of the Term (and not just the balance of the Term);
- (b) on the basis that the Lessee has complied with all its obligations under this lease;
- (c) not taking into account any damage or destruction to the Premises and not taking into account any resulting suspension or abatement of Rent;

- (d) not taking into account any disturbance or nuisance to the Lessee's use of the Premises caused by any act or neglect of the Lessor or any adjoining owner or occupier;
- (e) not taking into account any improvements or fixtures erected or installed at the Lessee's expense which the Lessee is permitted to remove at the end of this lease;
- (f) taking into account any increase in value of the Premises arising from any permanent improvements on the Premises at the expense of either the Lessee or the Lessor and which the Lessee is not entitled to remove;
- (g) not taking into account any goodwill attributable to the Premises by reason of any trade, business or actions carried on by the Lessee; and
- (h) not taking into account any cash, premium, payment, abatement, allowance or other incentive paid, offered or allowed in respect of this lease or being offered or given in respect of comparable premises to induce lessees to take a lease of or remain in such comparable premises.

Default Rate means the rate which is two per centum (2%) per annum greater than the published annual rate of interest charged from time to time by Westpac Banking Corporation on overdraft facilities of more than \$100,000.00 and if there is more than one rate published the highest of those rates.

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.

Fixed Amount means a specified amount nominated as a Review Method.

Guarantor means each person (if any) named in Item 10 of Schedule 1 and any other person who provides a guarantee of the Lessee's obligations under this lease.

GST has the meaning given to that term in the GST Legislation.

GST Legislation means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any similar or ancillary legislation.

GST Rate means 10% or the rate of GST imposed from time to time under the GST Legislation.

Institute means the South Australian Division of the Australian Property Institute.

Initial Term means the initial term of this lease commencing on the Commencement Date and described in Item 2 of Schedule 1.

Legislation includes any relevant Act of Parliament (whether State or Federal) and any regulation or by-law including by-laws issued by any local government body or authority.

Lessee means the party described as 'Lessee' on the lease panel form and where the context permits includes the employees, contractors, customers, agents and other invitees of the Lessee.

Lessee's Equipment means any and all fixtures and fittings and other equipment installed in or brought on to or kept in the Premises by the Lessee.

Lessor means the party described as 'Lessor' on the lease panel form and where the context permits includes the Manager (if any) and the employees, contractors, agents and other invitees of the Lessor and the Manager.

Lessor's Equipment means any and all fixtures, fittings, plant, equipment, services, chattels and other goods situated at any time in or on the Premises or available for use by the Lessee.

Manager means any manager appointed by the Lessor under clause 11.8.

Market Review means a review of Rent to Current Market Rent as set out in clause 5.5.

Network Charge means the costs payable from time to time to the operator of the external electricity distribution network to which the Premises are connected on account of the use of the network to deliver electricity to the Premises.

Outgoings means the total of all amounts paid or payable by the Lessor in connection with the ownership, management, administration and operation of the Premises including:

- (a) the cost of insuring the Premises including all improvements;
- (b) the cost of insuring the Lessor against public risk;
- (c) the amount of any excess or deductible not paid or excluded under any insurance policy taken out by the Lessor;
- (d) the cost of insuring the Lessor against loss of rent and other consequential loss for a period not exceeding 12 months;
- (e) all costs (including wages and other usual employment on-costs) of the management, control and administration of the Premises;
- (f) all costs of the Lessor in connection with the maintenance, repair, replacement and renovation of the Premises from time to time;
- (g) all costs of the Lessor in connection with cleaning, lighting, heating and air-conditioning the Premises;
- (h) all costs of the Lessor in connection with preparing and providing any audited statement which is required to be prepared and/or provided under this lease or by Legislation; and
- (i) contributions to any sinking fund established under clause 6.4.

Payment Date means the Commencement Date and the first day of each month during the Term.

Permitted Use means the use described in Item 6 of Schedule 1.

Premises means the premises described in Item 1 of Schedule 1 including all present and future improvements thereon and the Lessor's Equipment.

Previous CPI means, for a CPI Review Date, the CPI number for the quarter ending immediately before the last Review Date (or if there has not been a review, the Commencement Date).

Rates and Taxes means all present and future rates, charges, levies, assessments, duty and charges of any Statutory Authority, department or authority having the power to raise or levy any such amounts in respect of the use, ownership or occupation of the Premises and includes water and sewer charges, council rates, emergency services levy and, subject to the Act, land tax (on a single holding basis).

Renewal Term means the term (if any) of renewal or extension granted under this lease.

Rent means the rent described in Item 4 of Schedule 1.

Review Date means each date described in Item 5 of Schedule 1.

Review Method means the relevant method of rent review in Item 5 of Schedule 1 for any Review Date.

Statutory Authorities means any government authorities or authorities created by or under any relevant Legislation.

Statutory Requirements means all relevant Legislation and all lawful conditions, requirements, notices and directives issued or applicable under any such Legislation or by any Statutory Authorities.

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.

Valuer means a qualified valuer appointed to make a determination under this lease and:

- (a) who is appointed by agreement of the Lessor and the Lessee or, failing agreement within 14 days of either notifying the other of the requirement for such appointment, at the request of either the Lessor or the Lessee, by the President or acting President of the Institute;
- (b) who has practised as a valuer with a minimum of five years relevant experience; and
- (c) who acts as an expert and not as an arbitrator.

Yearly Amounts means the aggregate of the Rent, Outgoings and any other moneys payable by the Lessee during the Term.

1.2 Interpretation

In this lease, unless the context otherwise requires:

- 1.2.1 headings do not affect interpretation;
- 1.2.2 singular includes plural and plural includes singular;
- 1.2.3 words of one gender include any gender;
- 1.2.4 a reference to a party includes its executors, administrators, successors and permitted assigns;
- 1.2.5 a reference to a person includes a partnership, corporation, association, government body and any other entity;
- 1.2.6 a reference to this lease includes any schedules and annexures to this lease;
- 1.2.7 a reference to any document (including this lease) is to that document as varied, novated, ratified or replaced from time to time;
- 1.2.8 an agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- 1.2.9 an agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- 1.2.10 a reference to legislation includes any amendment to it, any legislation substituted for it, and any subordinate legislation made under it;
- 1.2.11 a provision is not construed against a party only because that party drafted it;
- 1.2.12 an unenforceable provision or part of a provision may be severed, and the remainder of this lease continues in force;
- 1.2.13 the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions;
- 1.2.14 an expression defined in the *Corporations Act 2001* (Cth) has the meaning given by that act at the date of this lease;
- 1.2.15 the covenants and powers implied in leases by virtue of sections 124 and 125 of the *Real Property Act 1886* apply and are implied in this lease unless they are expressly or impliedly excluded or modified; and
- 1.2.16 the special conditions in **Error! Reference source not found.** prevail over the terms in the body of this lease to the extent of any inconsistency.

1.3 Retail and Commercial Leases Act

If the Act applies to this lease:

- 1.3.1 this lease must be interpreted subject to the Act;

- 1.3.2 any right, power or remedy of the Lessor or obligation or liability of the Lessee that is affected by the Act is unenforceable or void but only to the extent that it is expressly made unenforceable or void by the Act.

1.4 Background

The Background forms part of this lease and is correct.

2. GRANT OF LEASE

The Lessor grants and the Lessee accepts a lease of the Premises for the Term as set out in this lease.

3. TERM LESS THAN FIVE YEARS

- 3.1 This clause only has effect where:

- 3.1.1 the Act applies to this lease; and

- 3.1.2 the Term is less than five years.

- 3.2 The Lessor and the Lessee acknowledge and agree that:

- 3.2.1 the Term is less than five years; and

- 3.2.2 section 20B of the Act does not apply to this lease for the Term (including any holding over period which exceeds six months).

- 3.3 The Lessee acknowledges that:

- 3.3.1 the Lessee has received independent legal advice explaining the effect of section 20B of the Act and how it would apply if this lease did not contain this clause;

- 3.3.2 the Lessee was not acting under coercion or undue influence in requesting or consenting to this clause; and

- 3.3.3 the Lessee has given assurances to the Lessee's lawyer that the Lessee was not acting under coercion or undue influence in requesting or consenting to this clause.

4. RENT

4.1 Payment of Rent

The Lessee must pay the Rent by equal instalments in advance on each Payment Date.

4.2 Instalment

If a rent instalment period is less than a month, the instalment for that period is calculated at a daily rate based on the number of days in the month in which that period begins and the monthly instalment which would have been payable for a full month.

5. RENT REVIEWS

5.1 Fixed Amount review

Where the Review Method for any Review Date is a Fixed Amount, the Rent on and from that Review Date is calculated as follows:

$$R_2 = R_1 \times (1 + F)$$

Where:

R_2 is the Rent on and from the Review Date;

R_1 is the Rent immediately before the Review Date (disregarding any abatements, incentives or reductions); and

F is the rate set out in Item 5 of Schedule 1 in relation to that Review Date.

5.2 CPI review

Where the Review Method for any Review Date is CPI, the Rent on and from that Review Date is calculated as follows:

$$R_2 = R_1 \times \frac{\text{Current CPI}}{\text{Previous CPI}}$$

Where:

R_2 is the Rent on and from the Review Date; and

R_1 is the Rent immediately before the Review Date (disregarding any abatements, incentives or reductions).

5.3 Change to CPI

If the CPI is no longer published, either party may ask the President of the Institute to nominate an index which reflects the rate of price change in the area and group for the CPI and 'CPI' then means that index. Each party must pay one half of the President's costs for nominating an index.

5.4 Market Review

Where the Review Method for any Review Date is a Market Review, then the Rent must be reviewed to the Current Market Rent.

5.5 Current Market Rent

5.5.1 The Lessor may at any time give the Lessee written notice stating the Lessor's assessment of the Current Market Rent.

5.5.2 The Rent from and including the relevant Review Date is the amount stated in the Lessor's notice under clause 5.5.1 unless the Lessee gives the Lessor written notice disagreeing with that amount (**Objection**) within 14 days after the Lessor's notice.

- 5.5.3 If the Lessee gives the Lessor an Objection, then the Rent must be determined by a Valuer.
- 5.5.4 The Valuer must determine the Current Market Rent under this clause.
- 5.5.5 The Lessor and the Lessee may make written submissions to the Valuer within 14 days after the Valuer is appointed.
- 5.5.6 Each party must forward to the other a copy of all written material provided to the Valuer when it is provided to the Valuer.
- 5.5.7 Within 14 days after receiving those written materials, a party may give written comments to the Valuer on the other party's written submissions.
- 5.5.8 The Valuer must make the determination in writing within 60 days after appointment, giving detailed reasons and specifying the matters required to be taken into account under this lease). The determination is final and binding.
- 5.5.9 If the Valuer's determination is more than the Lessor's assessment of the Current Market Value, the Lessee must pay all the costs of the valuation. In all other cases, the costs of the valuation must be shared equally between the Lessor and Lessee.

5.6 Rent pending determination

- 5.6.1 The Rent may be reviewed at any time from a Review Date even if the review is instituted after that Review Date.
- 5.6.2 If the Rent to apply on and from a Review Date is not agreed or determined by that Review Date, the Lessee must continue to pay instalments of Rent at the rate that applied before the relevant Review Date until the Rent is determined.

5.7 Adjustment once Rent determined

Once the Rent to apply on and from a Review Date is determined, the Lessee must pay any shortfall, and the Lessor must allow any adjustment for overpayment at the next Payment Date.

5.8 No decrease in Rent

Subject to the Act, the Rent will not decrease on a Review Date.

5.9 Other review

Subject to the Act, the Lessor and Lessee may negotiate and agree a Rent to apply from a Review Date without following this clause.

- 5.5.3 If the Lessee gives the Lessor an Objection, then the Rent must be determined by a Valuer.
- 5.5.4 The Valuer must determine the Current Market Rent under this clause.
- 5.5.5 The Lessor and the Lessee may make written submissions to the Valuer within 14 days after the Valuer is appointed.
- 5.5.6 Each party must forward to the other a copy of all written material provided to the Valuer when it is provided to the Valuer.
- 5.5.7 Within 14 days after receiving those written materials, a party may give written comments to the Valuer on the other party's written submissions.
- 5.5.8 The Valuer must make the determination in writing within 60 days after appointment, giving detailed reasons and specifying the matters required to be taken into account under this lease). The determination is final and binding.
- 5.5.9 If the Valuer's determination is more than the Lessor's assessment of the Current Market Value, the Lessee must pay all the costs of the valuation. In all other cases, the costs of the valuation must be shared equally between the Lessor and Lessee.

5.6 Rent pending determination

- 5.6.1 The Rent may be reviewed at any time from a Review Date even if the review is instituted after that Review Date.
- 5.6.2 If the Rent to apply on and from a Review Date is not agreed or determined by that Review Date, the Lessee must continue to pay instalments of Rent at the rate that applied before the relevant Review Date until the Rent is determined.

5.7 Adjustment once Rent determined

Once the Rent to apply on and from a Review Date is determined, the Lessee must pay any shortfall, and the Lessor must allow any adjustment for overpayment at the next Payment Date.

5.8 No decrease in Rent

Subject to the Act, the Rent will not decrease on a Review Date.

5.9 Other review

Subject to the Act, the Lessor and Lessee may negotiate and agree a Rent to apply from a Review Date without following this clause.

6. RATES AND TAXES AND OUTGOINGS

6.1 Liability for Rates and Taxes

- 6.1.1 The Lessee must pay or reimburse the Lessor all Rates and Taxes levied, assessed or charged in respect of the Premises or upon the owner or occupier of the Premises.
- 6.1.2 The Rates and Taxes must be adjusted between the Lessor and the Lessee as at the Commencement Date and the end or termination date of this lease.

6.2 Liability for Outgoings

- 6.2.1 The Lessee must pay or reimburse the Lessor all Outgoings (including Rates and Taxes) levied, assessed or charged in respect of the Premises or upon the owner or occupier of the Premises.
- 6.2.2 The Outgoings must be adjusted between the Lessor and the Lessee as at the Commencement Date and the end or termination date of this lease.

6.3 Payments, estimates and adjustments

- 6.3.1 Subject to the Act, the Lessee must (if required) pay monthly instalments on account of Outgoings in advance on each Payment Date.
- 6.3.2 Not later than one month before the commencement of each Accounting Period, the Lessor must provide to the Lessee a written estimate of Outgoings for that Accounting Period and the amount that the Lessee must contribute towards those Outgoings.
- 6.3.3 At the request of the Lessee (acting reasonably), the Lessor must give the Lessee information and explanations about Outgoings expenditure to which the Lessee is required to contribute and how the Lessee's contribution is determined.
- 6.3.4 Not later than three months after the end of each Accounting Period, the Lessor must provide to the Lessee a statement in relation to Outgoings. The statement must:
 - 6.3.4.1 contain a statement of all Outgoings expenditure by the Lessor in the relevant Accounting Period towards which the Lessee is required to contribute; and
 - 6.3.4.2 be in a form that allows the Lessee to compare actual Outgoings expenditure with the estimates given by the Lessor.
- 6.3.5 There must be an adjustment between the Lessor and the Lessee to take account of any underpayment or overpayment by the Lessee in respect of Outgoings. This adjustment (if any is due) must be made on the next Payment Date.

6.4 Sinking fund

- 6.4.1 The Lessor may establish a sinking fund for major repairs or maintenance to the Premises.
- 6.4.2 The Lessor must advise the Lessee in writing of the establishment of any such sinking fund and of the contribution to be made by the Lessee.
- 6.4.3 The following provisions apply to any sinking fund:
 - 6.4.3.1 the Lessor must establish a separate fund for such moneys and all monies paid by the Lessee in this regard must be paid into that fund;
 - 6.4.3.2 that fund or so much of the balance standing to the credit of that fund as remains unexpended from time to time for a purpose for which the fund was established must be held by the Lessor in a separate interest bearing account;
 - 6.4.3.3 any amounts paid by the Lessee for credit of that fund, and the net interest earned by the Lessor on that fund, must not be applied by the Lessor for any purpose other than that for which the fund was established.

6.5 Power and other utilities

- 6.5.1 The Lessee must pay when due the full amount of all accounts, invoices, assessments and charges with regard to the consumption, use or supply of telephone, light, electricity, gas, and any and all other services and utilities supplied to or used from the Premises.
- 6.5.2 If there is no separate meter for a service or utility used on or from the Premises and if the Lessor so requires, then the Lessee must install the meter at its own cost.
- 6.5.3 Without limiting this subclause, the Lessee must comply with the *Electricity (General) Regulations 1997 (SA)* and any other applicable electricity laws.

7. USE OF PREMISES

7.1 Permitted Use

The Lessee may use the Premises only for the Permitted Use and must not use or allow the Premises to be used for any other use, without the Lessor's consent.

7.2 Operation of Lessee's business

The Lessee must (if applicable):

- 7.2.1 keep the Premises fully stocked and staffed, and operate the Lessee's business with due diligence and efficiency in a proper and businesslike manner; and

- 7.2.2 keep the Premises open for trade during normal business hours from the Premises and (where permitted by law) during the days and hours from time to time notified by the Lessor to the Lessee as the designated operating hours for the Premises.

7.3 Offensive activities

The Lessee must:

- 7.3.1 not carry on any offensive or dangerous activities on or from the Premises;
- 7.3.2 not create a nuisance or disturbance for the Lessor or for the owners or occupiers of any adjoining property; and
- 7.3.3 ensure at all times that activities conducted on or from the Premises do not discredit the Lessor.

7.4 Use of facilities

- 7.4.1 The Lessee must ensure that all facilities provided by the Lessor within the Premises are used carefully and responsibly for their intended purpose and in accordance with any directions given by the Lessor from time to time.
- 7.4.2 The Lessee must repair or correct any damage or malfunction which results from any misuse or abuse of the facilities by the Lessee.

7.5 Statutory Requirements

The Lessee must comply with all Statutory Requirements (including the *Occupational Health Safety and Welfare Act 1986* (SA)) relating to:

- 7.5.1 the Lessee's use and occupation of the Premises;
- 7.5.2 the nature of the business conducted on the Premises by the Lessee and the Permitted Use;
- 7.5.3 the number and sex of staff or others employed to work in the Premises; or
- 7.5.4 any deliberate or negligent act or omission of the Lessee;

including any requirements for building works or modifications to the Premises (whether structural or otherwise).

7.6 Alcohol and Gaming

- 7.6.1 Unless the Lessee first obtains the written consent of the Lessor, the Lessee must not apply for:
 - 7.6.1.1 a liquor licence under the *Liquor Licensing Act 1997*; or
 - 7.6.1.2 a gaming machine licence under the *Gaming Machines Act 1992*.

7.6.2 If the Lessee obtains a licence (or licences) under this clause, the Lessee must not do (or fail to do) or allow any of its employees agents contractors, licensees or invitees to (or fail to):

7.6.2.1 do anything that is in breach of the *Liquor Licensing Act* 1997 and/or the *Gaming Machines Act* 1992 (as the case may be) or of the conditions of the relevant licence; or

7.6.2.2 do anything that may result in the relevant licence being revoked or suspended;

7.6.2.3 assign the licence;

7.6.2.4 apply to remove the licence;

7.6.2.5 allow a licence to be granted to another person in respect of the Premises or any part of the Premises; or

7.6.2.6 apply to vary or revoke any conditions of the licence.

7.6.3 At or before the expiry or early termination of this Lease, the Lessee must:

7.6.3.1 give any notices the Lessor requires to renew or assign the licence;

7.6.3.2 allow those notices to be affixed as and for the period required by the *Liquor Licensing Act* 1997 and/or the *Gaming Machines Act* 1992 as the case may be;

7.6.3.3 assign the licence to the Lessor or the Lessor's nominees if required to do so by the Lessor; and

do anything else that may be required to affect the renewal or assignment of the licence.

7.7 Signs

The Lessee must not place any sign or advertisement on the outside of the Premises, or inside the Premises (if it can be seen from outside of the Premises), except a sign or advertisement promoting the name and nature of the business conducted on the Premises by the Lessee and which:

7.7.1 is approved (in writing) by the Lessor; and

7.7.2 complies with any relevant Statutory Requirements.

7.8 Displays, fixtures and fittings

The Lessee must (if applicable):

7.8.1 install and maintain adequate displays in the windows of the Premises and keep the displays well lit;

- 7.8.2 keep the Premises fitted out with machinery, fixtures and fittings (which must be new unless the Lessor's consent is obtained) required to adequately carry on the Permitted Use;
- 7.8.3 keep the displays, machinery, fixtures and fittings in good repair and condition; and
- 7.8.4 not display goods or merchandise outside the Premises without the Lessor's consent.

7.9 Dangerous equipment and installations

The Lessee may only install or use within the Premises equipment which is reasonably necessary for, and which is normally used in connection with, businesses of the type conducted on the Premises by the Lessee in accordance with the Permitted Use and must not install or bring onto the Premises:

- 7.9.1 any electrical, gas powered or other machinery or equipment which is not designed for use in such premises and which may pose a danger, risk or hazard to the Premises or any people;
- 7.9.2 any chemicals or other dangerous substances which by their nature, or their volume, may pose a danger, risk or hazard to the Premises or any people; or
- 7.9.3 any heavy equipment or items which may damage the Premises.

7.10 Fire precautions

The Lessee must:

- 7.10.1 comply with all requirements and directives of the Lessor with regard to fire safety systems and procedures including fire evacuation drills and other procedures; and
- 7.10.2 comply with all Statutory Requirements relating to fire safety and procedures including any structural works or modifications or other building works which are required as a result of:
 - 7.10.2.1 the Lessee's use or occupation of the Premises;
 - 7.10.2.2 the nature of the business conducted on the Premises by the Lessee;
 - 7.10.2.3 the number and sex of the staff or others employed to work on the Premises; or
 - 7.10.2.4 any deliberate or negligent act or omission of the Lessee.

7.11 Notice of defect

The Lessee must:

- 7.11.1 give the Lessor prompt notice of any circumstance or event which the Lessee should reasonably be aware might cause danger, risk or hazard to the Premises or to any person in the Premises; and
- 7.11.2 if required by the Lessor, promptly rectify any defect or want of repair to make the Premises safe from any danger, risk or hazard.

7.12 Security

The Lessee must keep the Premises securely locked at all times when the Premises are not occupied or open for business and must provide a key to the Premises to the Lessor (or if the Lessor has engaged a Manager, then to the Manager) to be used only in emergencies for the purpose of safety and preservation of property.

7.13 No warranty

The Lessor makes no warranty or representation regarding:

- 7.13.1 the suitability of the Premises (structural or otherwise) for the Permitted Use or any other purpose and the Lessee occupies the Premises at its own risk; and
- 7.13.2 the exclusivity or otherwise of the Permitted Use for the Lessee.

8. INSURANCE

8.1 Lessee must insure

The Lessee must keep current during the Term (in connection with the Premises and the Lessee's Equipment):

- 8.1.1 public risk insurance for at least the amount in Item 7 of Schedule 1 (or any other amount the Lessor reasonably requires) for each claim;
- 8.1.2 plate glass insurance against usual risks;
- 8.1.3 all insurance in respect of the Lessee's Equipment for its full replacement value; and
- 8.1.4 other insurances required by any Statutory Requirement or which the Lessor reasonably requires for at least the amounts the Lessor reasonably requires.

8.2 Requirements for policies

Each policy must:

- 8.2.1 be with an insurer and on terms approved by the Lessor;
- 8.2.2 be in the name of the Lessee and note the interest of the Lessor and any other person the Lessor requires;
- 8.2.3 have no limit on the number of claims that can be made under it;

- 8.2.4 cover events occurring during the policy's currency regardless of when claims are made; and
- 8.2.5 note that despite any similar policies of the Lessor, the Lessee's policies will be primary policies.

8.3 Evidence of insurance

On or before the Commencement Date, the Lessee must give the Lessor certificates evidencing the currency of each policy. During the Term the Lessee must:

- 8.3.1 pay each premium before it is due for payment;
- 8.3.2 give the Lessor certificates of currency each year when the policies are renewed and at other times the Lessor requests;
- 8.3.3 not vary or allow to lapse any insurance policy without the Lessor's consent;
- 8.3.4 notify the Lessor immediately if a policy is cancelled or if an event occurs which could prejudice or give rise to a claim under a policy.

8.4 Insurance affected

- 8.4.1 The Lessee must not do anything which may:
 - 8.4.1.1 prejudice any insurance of the Premises; or
 - 8.4.1.2 increase the premium for that insurance.
- 8.4.2 If the Lessee does anything (with or without the Lessor's consent) that increases the premium of any insurance the Lessor has in connection with the Premises, the Lessee must pay the amount of that increase to the Lessor on demand.

9. REPAIR AND MAINTENANCE

9.1 Repair

- 9.1.1 The Lessee must keep and maintain the Premises and the Lessee's Equipment in good repair.
- 9.1.2 If the Lessor so requires, the Lessee must promptly repair damage to the Premises caused or contributed to by the act, omission, negligence or default of the Lessee.

9.2 Maintain and replace

The Lessee must maintain items in or attached to the Premises, and, if damaged or worn, repair them or replace them with items of quality similar to those in use at the Commencement Date, or, if previously replaced with the Lessor's approval, when last replaced.

9.3 Alterations by Lessee

- 9.3.1 The Lessee must not carry out any alterations or additions to the Premises without the Lessor's consent.
- 9.3.2 The Lessee must provide full details of the proposed alterations and additions to the Lessor.
- 9.3.3 The Lessor may impose any conditions it considers necessary if it gives its approval, including requiring the Lessee to obtain the Lessor's consent to any agreements that the Lessee enters into in relation to the alterations or additions.
- 9.3.4 The Lessee must carry out any approved alterations and additions:
 - 9.3.4.1 in a proper and workmanlike manner;
 - 9.3.4.2 in accordance with the conditions imposed by the Lessor and with the approvals made by Lessor in its capacity as lessor under this lease;
 - 9.3.4.3 in accordance with all Statutory Requirements; and
 - 9.3.4.4 in a way to minimise disturbance to others.
- 9.3.5 Unless otherwise agreed in writing between the parties, all alterations and additions to the Premises made pursuant to this clause become the property of the Lessor.
- 9.3.6 The Lessee must pay all of the Lessor's costs (including consultant's costs and legal costs) as a result of considering the Lessee's proposed alterations and additions (whether or not that consent is granted).

9.4 Refurbishment, re-fitting and redecoration

- 9.4.1 The Lessee must refurbish, re-fit and redecorate the Premises (**Refurbishment**) on or before each date specified in Item 8 of Schedule 1 to the following specification:
 - 9.4.1.1 clean and repair all surfaces to be redecorated;
 - 9.4.1.2 paint (with at least two coats) or wallpaper, stain, varnish or polish each surface to be redecorated according to the previous treatment of that surface; and
 - 9.4.1.3 replace the shop front, signage, floor coverings, ceilings, lighting and fixtures and fittings with new items.
- 9.4.2 The Lessee must carry out the Refurbishment to the standard of the Premises when they were last refurbished with the Lessor's approval, or if they have not been so refurbished, to their standard at the Commencement Date.

9.5 Cleaning

The Lessee must:

9.5.1 keep the Premises clean and tidy; and

9.5.2 keep the Premises free of vermin, insects and other pests.

9.6 Structural work

Despite clauses 9.1 and 9.2, the Lessee is not required to carry out any structural work to the Premises unless that work is required as a result of:

9.6.1 the Lessee's use or occupation of the Premises;

9.6.2 the nature of the business conducted on the Premises by the Lessee;

9.6.3 the number and sex of staff or others employed to work in the Premises; or

9.6.4 any deliberate or negligent act or omission of the Lessee.

10. ASSIGNING, SUBLETTING AND CHARGING

10.1 Assignment

The Lessee may, subject to the Act, only assign its interest in this lease if:

10.1.1 the proposed assignee does not change the Permitted Use;

10.1.2 the proposed assignee is able to meet the financial obligations under this lease;

10.1.3 the Lessor reasonably considers that the proposed assignee's business skills are not inferior to those of the Lessee; and

10.1.4 the Lessee has complied with the Lessor's procedural requirements for obtaining the Lessor's consent.

10.2 Subletting

The Lessee must not sublet, license, hire out or part with possession of any part of the Premises without the Lessor's consent.

10.3 Charging

10.3.1 The Lessee must not mortgage or charge the Lessee's interest in this lease or the Lessee's Equipment without the Lessor's consent.

10.3.2 If the Lessor consents to a charge on the Lessee's Equipment then the Lessee must enter into a deed in a form required by the Lessor that ensures the charge is subject to the Lessor's rights under this lease.

10.4 Request for assignment or other arrangements

If the Lessee requests that the Lessor consent to any assignment or parting with possession of the Premises or any part of it, the Lessee must immediately on receipt of a request to do so from the Lessor:

- 10.4.1 pay all arrears of Rent any other moneys outstanding under this lease and remedy all outstanding breaches and pay to the Lessor any sum of money the Lessor reasonably estimates to be required to comply with the Lessee's obligations under this lease and the Lessor's reasonable costs of inspecting the Premises;
- 10.4.2 submit a true copy of all agreements to be entered into in respect of any proposed dealing with this lease or the Premises (including any business sale agreement), and evidence satisfactory to the Lessor that the proposed assignee is respectable responsible solvent and suitable, and information reasonably required by the Lessor about the financial standing and business experience of the proposed assignee;
- 10.4.3 if the proposed assignee is a trustee of a trust, submit a copy of the instrument under which such trust was constituted and the full names addresses and occupations of the beneficiaries of such trust;
- 10.4.4 procure the proposed assignee to submit to the Lessor a business plan setting out the proposed assignee's plans, intentions and projections concerning the business conducted at the Premises (and containing such details and particulars as are reasonably required by the Lessor); and
- 10.4.5 pay to the Lessor the reasonable costs of and incidental to any inspection of the Premises and enquiries concerning the proposed dealing or the persons concerned in such dealing and of the perusal, preparation, negotiation and stamping of the documents deemed necessary by the Lessor.

10.5 **Direct covenants and guarantees**

If such consent is given, the Lessee must ensure that prior to the date of any assignment the proposed assignee enters into a direct covenant with the Lessor to observe the terms of this lease and furnishes such guarantees of the performance of the proposed assignee's obligations under this lease as the Lessor may reasonably require.

10.6 **Deemed assignment**

If the Lessee is a corporation (not being a company with its shares listed on any Stock Exchange in Australia) or an association, any change in the beneficial ownership of 20% or more of the voting shares in the corporation or any change in the effective control of the corporation or association, is deemed to be an assignment of the Premises requiring the Lessor's consent.

10.7 **Costs**

The Lessee must pay all costs reasonably incurred by the Lessor (including the costs of any consultant or any legal fees) in relation to any dealing, including in considering whether or not to grant any consent to a request by the Lessee.

10.8 **No release**

Subject to the Act, where the Lessor grants consent or is deemed to grant consent to an assignment, the Lessee (that is, the assignor) and any

Guarantors are not released or discharged from their current and future obligations and liabilities under this lease.

11. LESSOR'S OBLIGATIONS AND RIGHTS

11.1 Quiet enjoyment

Subject to the Lessor's rights and to the Lessee complying with the Lessee's obligations under this lease, the Lessee may occupy the Premises during the Term without interference from the Lessor.

11.2 Right to enter

The Lessor may (except in an emergency when no notice is required) enter the Premises after giving the Lessee reasonable notice:

- 11.2.1 to see the state of repair of the Premises;
- 11.2.2 to do repairs to the Premises or other works which cannot reasonably be done unless the Lessor enters the Premises;
- 11.2.3 to do anything the Lessor must or may do under this lease or must do under any Legislation or to satisfy the requirements of any Statutory Authority;
- 11.2.4 to show prospective lessees through the Premises during the last six months of the Term; and
- 11.2.5 to show prospective purchasers through the Premises.

11.3 Emergencies

In an emergency the Lessor may:

- 11.3.1 close the Premises; and
- 11.3.2 prevent the Lessee (and its agents) from entering the Premises.

11.4 Works and restrictions

- 11.4.1 The Lessor may carry out works on the Premises (including extensions, renovations and refurbishment).
- 11.4.2 The Lessor must (except in an emergency) take reasonable steps to minimise interference with the Lessee's use and occupation of the Premises.

11.5 Right to deal with Premises

- 11.5.1 If the Lessor proposes to sub-divide, strata title or community title the Premises, the Lessee must within seven days of receiving the Lessor's request consent to any such application.
- 11.5.2 The Lessor's request must be accompanied with a lease of the Premises capable of registration following deposit of the strata or community plan on the same terms as this lease (unless otherwise

agreed), for the balance of the Initial Term and any Renewal Term, but including a term requiring the Lessee to observe the requirements (including any by-laws or articles) of the strata or community title scheme.

11.6 Lessor may sell

If the Lessor sells the Premises and another person becomes the lessor, the Lessor is released from its obligations under this lease with effect from the date it is no longer lessor.

11.7 Right to rectify

The Lessor may at the Lessee's cost do anything which the Lessee should have done under this lease but which the Lessee has not done or which the Lessor reasonably considers the Lessee has not done properly.

11.8 Management services

The Lessor may appoint a Manager to manage the Premises and any appointed Manager represents the Lessor (unless the Lessee is otherwise notified by the Lessor).

12. DAMAGE OR DESTRUCTION

12.1 Termination for destruction or damage

12.1.1 If the Premises are destroyed or are damaged so that they are unfit for the Lessee's use then, within three months after the damage or destruction occurs, the Lessor must give the Lessee either:

12.1.1.1 a notice terminating this lease (on a date at least one month after the Lessor gives notice); or

12.1.1.2 a notice advising the Lessee that the Lessor intends to repair the Premises so that the Premises are accessible and the Lessee can occupy and use the Premises (**Intention to Repair Notice**).

12.1.2 If the Lessor gives an Intention to Repair Notice but does not carry out the repairs within a reasonable time, the Lessee may give notice to the Lessor that the Lessee intends to end this lease if the Lessor does not make the Premises accessible and fit for use and occupation by the Lessee within a reasonable time (having regard to the nature of the required work) (**Intention to Terminate Notice**).

12.1.3 If the Lessor does not give a notice under this subclause or does not take the action required by the Intention to Terminate Notice, the Lessee may end this lease by giving the Lessor not less than one month's notice.

12.2 Reduction or abatement of Rent

12.2.1 While the Premises are unfit or inaccessible, the Yearly Amounts are reduced unless:

12.2.1.1 the Premises are unfit or inaccessible; or

12.2.1.2 an insurer refuses to pay a claim;

as a result of a deliberate or negligent act or omission of the Lessee.

12.2.2 The level of the reduction (if any) depends on the nature and extent of the damage.

12.2.3 If the level of the reduction (if any) cannot be agreed it must be determined by a Valuer.

12.3 No prejudice

This clause does not prejudice the rights of the Lessor to recover loss and damage from the Lessee if and to the extent that the damage to the Premises is caused or contributed to by any deliberate or negligent act or omission by the Lessee.

13. RENEWAL

13.1 If a right of renewal or first right of renewal is specified in Item 3 of Schedule 1 and the Lessee wishes to exercise that right of renewal, then the Lessee must give a written notice to the Lessor not less than 6 months and not more than 12 months before the expiry of the Initial Term stating it wishes to renew this lease for the period specified in Item 3 of Schedule 1. If such notice is given, the Lessor must renew this lease for the first Renewal Term on the terms in this lease (except this subclause) commencing immediately after the Initial Term expires.

13.2 If a second right of renewal is specified in Item 3 of Schedule 1 and the Lessee wishes to exercise that right of renewal, then the Lessee must give a written notice to the Lessor not less than 6 months and not more than 12 months before the expiry of the Renewal Term stating it wishes to renew this lease for the period specified in Item 3 of Schedule 1. If such notice is given, the Lessor must renew this lease for the second Renewal Term on the terms in this lease (except this subclause and the previous subclause) commencing immediately after the first Renewal Term expires.

13.3 The Lessee is not entitled to renew this lease if:

13.3.1 the Lessee has been in breach of this lease at any time before giving notice of exercise of the right of renewal;

13.3.2 the Lessee is in breach of this lease at the time of giving that notice; or

13.3.3 the Lessee is in breach or commits a breach of this lease after giving that notice but before commencement of the Renewal Term.

14. RIGHTS AND OBLIGATIONS ON EXPIRY

14.1 Expiry

This lease comes to an end at midnight on the last day of the Term unless it is terminated earlier by the Lessor or the Lessee under this lease.

14.2 Handover of possession

14.2.1 Before this lease comes to an end, the Lessee must:

14.2.1.1 remove all of the Lessee's Equipment and repair any damage caused by such removal;

14.2.1.2 remove and reinstate any alterations or additions made by the Lessee;

14.2.1.3 refurbish the Premises as required under clause 9.4; and

14.2.1.4 complete any repairs and maintenance which the Lessee is obliged to carry out under this lease.

14.2.2 If it is not practical for the Lessee to undertake and complete these requirements before this lease comes to an end, then such works must be undertaken immediately after this lease comes to an end, but in accordance with the requirements of the Lessor relating to security, access and time for completion.

14.2.3 When this lease comes to an end the Lessee must:

14.2.3.1 hand over vacant possession of the Premises in good repair and condition consistent with the requirements of clause 9; and

14.2.3.2 hand over to the Lessor all keys and other security devices for the Premises which the Lessee has in its possession or control.

14.2.4 The Lessee is not relieved of its obligation to comply with this subclause, or to compensate the Lessor for failure to do so, because the Lessor accepts or takes possession of the Premises.

14.3 Abandoned goods

If, when this lease comes to an end, the Lessee leaves any goods or equipment at the Premises, then the Lessor may deal with and dispose of those goods in accordance with the Act.

14.4 Holding over

If, with the Lessor's consent, the Lessee continues to occupy the Premises after the end of this lease, the Lessee does so under a monthly tenancy which:

14.4.1 either party may terminate on one month's notice given at any time; and

14.4.2 is on the same terms as this lease.

15. BREACH

15.1 Payment obligations

15.1.1 The Lessee must make payments due under this lease:

15.1.1.1 without demand (unless otherwise provided);

15.1.1.2 without set-off, counter-claim, withholding or deduction;

15.1.1.3 to the Lessor or as the Lessor directs; and

15.1.1.4 by direct debit or other means directed by the Lessor.

15.1.2 If a Payment Date does not exist, the Lessee must make any payment due on that Payment Date on demand.

15.2 Set off

The Lessor may, by notice to the Lessee, set off any amount due by the Lessee to the Lessor under this lease or otherwise against any amount due by the Lessor to the Lessee under this lease.

15.3 Lessor's rights on breach

15.3.1 The Lessor may come onto the Premises and remedy a breach of this lease without notice:

15.3.1.1 in an emergency; or

15.3.1.2 if the Lessee breaches any provision of this lease and fails to remedy the breach within 14 days after receiving notice requiring it to do so.

15.3.2 The Lessee must pay or reimburse the Lessor on demand for all costs of remedying the breach.

15.4 Breach and re-entry

If:

15.4.1 the Lessee fails to pay a sum of money within seven days after it falls due (although no demand has been made);

15.4.2 the Lessee breaches any other provision of this lease and fails to remedy the breach within 14 days after receiving notice requiring it to do so;

15.4.3 there is any change in the direct or indirect beneficial ownership or control of the Lessee;

15.4.4 the Lessee disposes of the whole or any part of its assets, operations or business other than in the ordinary course of business;

15.4.5 the Lessee ceases to carry on business;

15.4.6 the Lessee ceases to be able to pay its debts as they become due;

15.4.7 any step is taken by a mortgagee to take possession or dispose of the whole or any part of the Lessee's assets, operations or business;

- 15.4.8 any step is taken to enter into any arrangement between the Lessee and its creditors;
- 15.4.9 any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person of the whole or any part of the Lessee's assets or business;
- 15.4.10 the Lessee is deregistered or dissolved or any step is taken by any person towards that;
- 15.4.11 the Lessee is a partnership and any step is taken to dissolve that partnership;
- 15.4.12 the Lessee is a natural person and commits an act of bankruptcy;
- 15.4.13 the Lessee is convicted of an indictable offence (other than a traffic offence);
- 15.4.14 execution is levied against the Lessee and not discharged within 14 days;
- 15.4.15 the Premises are unoccupied for one month or more without the Lessor's consent; or
- 15.4.16 an event described in clauses 15.4.3 - 15.4.14 occurs in respect of a Guarantor;

then despite any other clause of this lease, the Lessor:

- 15.4.17 may re-enter and repossess the Premises, without prejudice to its other rights; and
- 15.4.18 is discharged from any claim by or obligation to the Lessee under this lease.

15.5 Rights of Lessor not limited

A power or right of the Lessor under this lease or at law resulting from a breach or repudiation of this lease by the Lessee, or the exercise of such power or right, does not limit the Lessor's powers or rights.

15.6 Repudiation and damages

- 15.6.1 The following provisions are essential terms of this lease:
 - 15.6.1.1 the obligation to pay Rent;
 - 15.6.1.2 the obligation to pay Rates and Taxes;
 - 15.6.1.3 the obligation to pay Outgoings;
 - 15.6.1.4 the obligation to contribute to the sinking fund;
 - 15.6.1.5 the provisions about additions and alterations to the Premises;

15.6.1.6 the provisions about use of the Premises; and

15.6.1.7 the restriction on assignment, sub-letting, mortgaging and licensing.

15.6.2 The Lessor does not waive the essential nature of an essential term by accepting late payment of Rent or other money or by failing to exercise its rights or by delay in doing so.

15.6.3 Any breach of an essential term by the Lessee is a repudiation of this lease. The Lessor may at any time accept that repudiation, rescinding this lease.

15.6.4 If:

15.6.4.1 the Lessor terminates this lease because of a breach of an essential term by the Lessee; or

15.6.4.2 the Lessee repudiates this lease and the Lessor accepts that repudiation, rescinding this lease;

the Lessee must pay compensation to the Lessor including Rent and other moneys which the Lessor would otherwise have received under this lease for the balance of the Initial Term and any Renewal Term. The Lessor must take reasonable steps to mitigate its losses and to endeavour to lease the Premises at a reasonable rent and on reasonable terms.

15.7 Interest on overdue amounts

The Lessee must pay to the Lessor interest on any overdue amount on demand from when the amount becomes due until it is paid in full. Interest is calculated on outstanding daily balances at the Default Rate.

15.8 Landlord and Tenant Act

A notice under section 10 of the *Landlord and Tenant Act 1936* (SA) must allow 14 days for the Lessee to remedy a breach of this lease if it is capable of remedy and to make reasonable compensation in money to the satisfaction of the Lessor. No period of notice is required in respect of non-payment of Rent.

16. POWER OF ATTORNEY

16.1 Appointment

If the Lessor becomes entitled to re-enter and take possession of the Premises after complying with any relevant statutory provision (of which the statutory declaration of any duly authorised officer or employee of the Lessor or any Manager is conclusive evidence for the purpose of the Registrar General), the Lessee irrevocably appoints the Lessor to be the attorney of the Lessee to execute any documents and perform any acts the Lessor requires to give full effect to the power of re-entry under the *Real Property Act 1886*.

16.2 Ratification

The Lessor may do, execute and perform all things relating to the Premises as fully and effectually as the Lessee could do. The Lessee must ratify and confirm the appointment of and all actions by the Lessor under this clause.

17. INDEMNITY AND RELEASE

17.1 Risk

The Lessee occupies and uses the Premises at the Lessee's risk.

17.2 Indemnity

The Lessee is liable for and must indemnify the Lessor against all actions, liabilities, penalties, claims or demands for any loss, damage, injury or death incurred or suffered directly or indirectly including in connection with:

- 17.2.1 any act or omission of the Lessee;
- 17.2.2 the overflow or leakage of water or any other harmful agent into or from the Premises;
- 17.2.3 any fire on or from the Premises;
- 17.2.4 loss or damage to property or injury or death to any person caused by the Lessee, the use of the Premises by the Lessee or otherwise relating to the Premises;
- 17.2.5 a breach of this lease by the Lessee; or
- 17.2.6 the Lessee's use or occupation of the Premises.

17.3 Release

The Lessee releases the Lessor from all actions, liabilities, penalties, claims or demands for any damage, loss, injury or death occurring in the Premises except to the extent that they are caused by the Lessor's negligence.

17.4 Indemnities are independent

Each indemnity is independent from the Lessee's other obligations and continues during this lease and after this lease ends. The Lessor may enforce an indemnity before incurring expense.

17.5 Lessor's liability

Despite anything else in this lease, the Lessor is not liable (except to the extent of any negligence of the Lessor) for any loss or damage, and the Lessee has no right to terminate this lease or reduce payments under this lease, for any:

- 17.5.1 water being upon or coming through any roof, skylight or vent of the Premises;
- 17.5.2 acts or negligence of occupants of adjacent buildings or the public.

18. GOODS AND SERVICES TAX

18.1 Agreed consideration

If the Lessor is liable to pay GST in connection with a supply under this lease then:

- 18.1.1 the Agreed Consideration for that supply is exclusive of GST;
- 18.1.2 the Lessor may increase the Agreed Consideration or the relevant part of the Agreed Consideration by the GST Rate; and
- 18.1.3 the Lessee must pay the increased Agreed Consideration on the due date for payment by the Lessee of the Agreed Consideration.

18.2 Tax invoice

Where the Agreed Consideration is increased under this clause, the Lessor must, on or before the date on which the Agreed Consideration is payable, issue a tax invoice to the Lessee.

18.3 Liability for penalties

If the Lessee breaches this clause and as a result the Lessor becomes liable for penalties or interest for late payment of GST, then the Lessee must pay the Lessor on demand an amount equal to the penalties and interest.

19. BANK GUARANTEE

19.1 Issue of Bank Guarantee

If Item 9 of Schedule 1 contains Bank Guarantee details, the Lessee must arrange for the immediate issue of the Bank Guarantee.

19.2 Amount of Bank Guarantee

If the amount of the Bank Guarantee is calculated by reference to monthly instalments of Rent and if required by the Lessor, the Lessee must, immediately following any review or adjustment of the Rent, provide a replacement Bank Guarantee for an amount calculated by reference to the new monthly instalments of Rent (and where appropriate, reasonably estimated by the Lessor).

19.3 Claim on Bank Guarantee

- 19.3.1 The Lessee must provide the Bank Guarantee and any replacement of it as security for the payment of all moneys from time to time payable by the Lessee pursuant to this lease. If the Lessee is in default under this lease, the Lessor may claim under the Bank Guarantee for all moneys then and subsequently due and payable under this lease and all loss, damage, costs and expenses incurred by the Lessor as a consequence of the default.
- 19.3.2 The Lessor may claim and the bank must make payment under the Bank Guarantee without reference to the Lessee and notwithstanding any objection, claim or direction by the Lessee to the contrary.

19.4 Deficiency after claim

Whenever the Lessor has recourse to the Bank Guarantee, the Lessor may, by written notice to the Lessee, require the Lessee to reinstate the amount of the Bank Guarantee or provide an additional bank guarantee in relation to the amount of the claim (and any previous claims) made by the Lessor (**Deficiency**). Within seven days of receipt by the Lessee of each notice, the Lessee must:

19.4.1 provide evidence to the Lessor of the reinstatement of the existing Bank Guarantee to its full amount; or

19.4.2 provide to the Lessor an additional bank guarantee equal to the amount of the Deficiency. This clause applies (changed as necessary) to that additional bank guarantee.

19.5 No derogation

The rights of the Lessor under this clause do not derogate from the other rights and remedies available to the Lessor under this lease or at law or in equity in relation to any default of the Lessee.

19.6 Release of Bank Guarantee

Three (3) months after the expiration of the Term and the vacation of the Premises by the Lessee in accordance with this lease, provided the Lessee is not then in default, the Lessor must release the Bank Guarantee to the Lessee.

19.7 Assignment of lease

If the benefit of this lease is assigned by the Lessor to any person, the benefit of the Bank Guarantee extends to and is taken to be assigned to the assignee. The Lessee must do all things necessary to give effect to that assignment including providing a replacement Bank Guarantee in favour of the assignee if requested to do so by the Lessor.

19.8 No limit on claims

The amount of the Bank Guarantee does not limit the amount the Lessor may recover from the Lessee.

20. NO ABSOLUTE CAVEAT

The Lessee must not lodge or cause or permit to be lodged any absolute caveat over the certificate of title for the Premises.

21. ACKNOWLEDGEMENTS

The Lessee acknowledges and agrees that:

21.1 prior to the Lessor and Lessee entering into negotiations in respect of this lease a copy of the proposed lease was provided to the Lessee;

21.2 prior to the execution of this lease by the Lessee, a Disclosure Statement was provided to the Lessee;

- 21.3 prior to the execution of this lease by the Lessee a notice pursuant to section 18 of the Act was served on the Lessee by or on behalf of the Lessor;
- 21.4 the Lessee is not entitled to compensation under section 38 of the Act in respect of a particular occurrence if the likelihood of that occurrence was specifically drawn to the attention of the Lessee in writing before this lease was entered into;
- 21.5 the Lessor does not warrant that the Premises will for the duration of this lease be structurally suitable for the business to be conducted therein by the Lessee.

22. GUARANTEE

22.1 Guarantee and indemnity

In consideration of the Lessor executing this lease at the request of the Guarantor (which request is testified by the Guarantor's execution of this lease) the Guarantor:

- 22.1.1 guarantees to the Lessor the due and punctual payment to the Lessor of all moneys which become due and payable to the Lessor by the Lessee pursuant to this lease and the due and punctual observance and performance of all the Lessee's obligations in this lease; and
- 22.1.2 as a separate and independent liability, indemnifies the Lessor against all loss, damage, costs and expenses suffered or incurred by the Lessor by reason of any breach of this lease by the Lessee.

22.2 Guarantor's covenants

The Guarantor further agrees that:

- 22.2.1 this guarantee and indemnity continues throughout the Term and after the Term expires;
- 22.2.2 any payment made to the Lessor and later avoided by any statutory provision or discounted, refunded or reduced by any subsequent proceedings does not discharge the Guarantor's liability and, in any such event, the Lessor, the Lessee and the Guarantor must be restored to the rights which each would have had if the payment had not been made;
- 22.2.3 the Lessor may proceed against the Guarantor (or any one or more of them) concurrently, before or instead of proceeding against the Lessee without affecting the liability of the Guarantor or the Lessee;
- 22.2.4 the liability of the Guarantor is not prejudiced by the granting of time, credit or any indulgence or concession to the Lessee or by any compounding, compromise, release, absolute or partial discharge (whether by operation of law or otherwise), abandonment, waiver, variation, novation, relinquishment or renewal of any contractual rights, duties, guarantees or indemnities by the Lessee, or by any omission or neglect or by any other dealing, matter or thing which, but for this provision, could or might operate to prejudice this guarantee and

indemnity. This guarantee and indemnity is absolute and unconditional in all circumstances;

- 22.2.5 this guarantee and indemnity is not affected by any laches, acts, omissions or mistakes by the Lessor;
- 22.2.6 until the Lessee has fully performed and observed the Lessee's covenants in this lease and until the Lessor has received in full all moneys due from the Lessee under this lease, the Guarantor is bound by this guarantee and indemnity;
- 22.2.7 this guarantee and indemnity continues to bind the Guarantor notwithstanding:
 - 22.2.7.1 the death, bankruptcy, insolvency or liquidation (as the case may be) of the Lessee or the Guarantor or any one or more of them;
 - 22.2.7.2 any change in the constitution of the Lessor, the Lessee or the Guarantor;
 - 22.2.7.3 the happening of any thing, which under the law relating to sureties would, but for this provision, release the Guarantor from this guarantee and indemnity or discharge this guarantee and indemnity;
 - 22.2.7.4 any part of this lease being severed;
 - 22.2.7.5 any renewal or extension of the Term or any variation to the terms of this lease;
 - 22.2.7.6 any security taken by the Lessor being or becoming void or defective or any loss or impairment of such security;
 - 22.2.7.7 any assignment of this lease by the Lessee or any sub-letting or parting with possession of or control of the Premises with or without the Lessor's consent; or
 - 22.2.7.8 any surrender of this lease by operation of law;
- 22.2.8 if any part of this lease is severed under clause 1.2.12 then the Guarantor is not entitled to rely on or claim the benefit of any such severance;
- 22.2.9 this guarantee and indemnity is a continuing guarantee and indemnity and is not wholly or partially discharged by the payment of any moneys or the performance of any of the Lessee's covenants or any other thing;
- 22.2.10 the liability of the Guarantor is not affected by any collateral rights or obligations which may exist between the Guarantor and the Lessor or between the Guarantor and the Lessee;
- 22.2.11 the Guarantor waives in favour of the Lessor all rights of the Guarantor against the Lessee;

22.2.12 the Lessor may assign the rights and benefits of the Lessor under this guarantee and indemnity either absolutely or by way of security without the Lessee's or the Guarantor's consent and this guarantee and indemnity is fully enforceable by the assignee;

22.2.13 the Guarantor's liability under this guarantee and indemnity is not affected by:

22.2.13.1 the fact that any other person who was intended to execute this document or otherwise to become a co-surety has not done so or has not done so effectively; or

22.2.13.2 the discharge under statute or any principle of law or equity of any person who is a co-surety.

22.3 Extended operation of guarantee and indemnity

A reference in this clause to 'this lease' is a reference to any tenancy or other right whether legal, equitable or otherwise under which the Lessee occupies or is entitled to occupy the Premises including a tenancy for a fixed term, a periodic tenancy, a tenancy at will or a tenancy at sufferance.

23. MISCELLANEOUS

23.1 Consent

23.1.1 Unless otherwise provided, the Lessor may give (conditionally or unconditionally) or withhold consent or approval in its absolute discretion.

23.1.2 The Lessee must pay or reimburse the Lessor all costs paid or incurred (including any fees of any agent, consultant, architect or lawyer) with respect to any application for consent or approval.

23.2 Entire agreement

This lease:

23.2.1 constitutes the entire agreement between the parties about the Premises; and

23.2.2 supersedes any prior understanding, agreement, condition, warranty, indemnity or representation about the Premises.

23.3 Waiver

If the Lessor 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.

23.4 Exercise of power

23.4.1 The failure, delay, relaxation or indulgence by a party in exercising a power or right under this lease is not a waiver of that power or right.

- 23.4.2 An exercise of a power or right under this lease does not preclude a further exercise of it or the exercise of another right or power.

24. NOTICE

- 24.1 A notice, demand, consent, approval or communication under this lease (**Notice**) must be in writing, in English and signed by a person authorised by the sender.
- 24.2 Without excluding any other method, Notice is sufficiently given:
- 24.2.1 to the Lessee, if left at the Premises, or if the Lessee has vacated the Premises, if posted by pre-paid post to the last known address of the Lessee;
- 24.2.2 to the Lessor, if posted by pre-paid post to the Manager (if any) at its principal place of business in South Australia or the Lessor at its principal place of business in South Australia (which is taken to be the address stated in this lease unless the Lessee is or ought reasonably be aware that that is not the Lessor's principal place of business at the relevant time).
- 24.3 Notice given by pre-paid post is deemed to have been given three Business Days after posting.
- 24.4 If two or more people comprise a party, notice to one is effective Notice to all.

25. COSTS

On request, the Lessee must pay or reimburse to the Lessor:

- 25.1 any stamp duty payable on this lease;
- 25.2 if the Lessee has requested that this lease be registered, all government fees for registration of this lease. If a lease plan is required to be prepared and registered before this lease can be registered, then the Lessee must arrange and pay for the preparation and registration of that lease plan;
- 25.3 one half of all preparatory costs incurred by the Lessor. In this clause, **preparatory costs** has the meaning given by the Act, namely, legal and other expenses incurred by the Lessor in connection with the preparation, negotiation, stamping and registration of this lease including:
- 25.3.1 fees charged by a mortgagee for producing a Certificate of Title for the land over which this lease is to be registered, or for consenting to this lease; and
- 25.3.2 the costs of attendances on the Lessee by the Lessor, or a solicitor acting for the Lessor;
- 25.4 all of the legal costs (determined on a solicitor and client basis) incurred by the Lessor in connection with the extension of this lease; and
- 25.5 all legal and other costs incurred by the Lessor in consequence of any actual or threatened breach by the Lessee under this lease or in exercising or enforcing (or attempting to do so) any rights or remedies of the Lessor hereunder or at

Norman
Waterhouse

התאחדות עובדי המבחן

Schedule 1

Item 1 Premises	The whole of the land comprised in Certificate of Title Volume 5899 Folio 223	
Item 2 Initial Term	[TBC]	
Item 3 Renewal(s)	[TBC]	
Item 4 Rent	\$(TBC) per annum (exclusive of GST) subject to review pursuant to clause 13	
Item 5 Review Dates and Review Methods	Review Date	Review Method
	1. [TBC]	[TBC]
	2. [TBC]	[TBC]
Item 6 Permitted Use	[TBC]	
Item 7 Public risk insurance	\$20,000,000.00	
Item 8 Refurbishment	[TBC]	
Item 9 Bank Guarantee	[TBC]	
Item 10 Guarantors	[TBC]	

CONFIDENTIAL

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CONSENTS OF MORTGAGEES AND SECTION 32 DEVELOPMENT ACT 1993 CERTIFICATION

This lease does not contravene section 32 of the Development Act 1993.

DATED

EXECUTION

The common seal of
City of Burnside
was affixed in the presence of:

.....
Signature of Mayor

.....
Signature of Chief Executive Officer/City Manager

.....
Signature of the LESSEE

.....
Signature of WITNESS – Signed in my presence by
the LESSEE who is either personally known to me
or has satisfied me as to his or her identity. A
penalty of up to \$2000 or 6 months imprisonment
applies to improper witnessing.*

.....
Print Full name of Witness (BLOCK LETTERS)

.....
Address of Witness

.....
Business Hours Telephone Number

* NB: A penalty of up to \$2000 or 6 months imprisonment applies for improper witnessing.

CONFIDENTIAL

LANDS TITLES REGISTRATION
OFFICE
SOUTH AUSTRALIA

MEMORANDUM OF LEASE

FORM APPROVED BY THE REGISTRAR-GENERAL

**BELOW THIS LINE FOR OFFICE &
STAMP DUTY PURPOSES ONLY**

Prefix
L
Series No.

BELOW THIS LINE FOR AGENT USE ONLY

CERTIFIED CORRECT FOR THE PURPOSES
OF THE REAL PROPERTY ACT 1886

Solicitor/Registered Conveyancer/Lessee

AGENT CODE

Lodged by: **Norman Waterhouse** **NWAM**
273926\LXG01948583

Correction to: **Norman Waterhouse** **NWAM**
273926\LXG01948583

TITLES, CROWN LEASES, DECLARATIONS ETC. LODGED WITH
INSTRUMENT (TO BE FILLED IN BY PERSON LODGING)

1.
2.
3.
4.

PLEASE ISSUE NEW CERTIFICATE(S) OF TITLE AS FOLLOWS

1.
2.
3.
4.

DELIVERY INSTRUCTIONS (Agent to complete)
PLEASE DELIVER THE FOLLOWING ITEM(S) TO THE
UNDERMENTIONED AGENT(S)

ITEM(S)	AGENT CODE

CORRECTION	PASSED
REGISTERED	
REGISTRAR-GENERAL	

30 November 2011

Mr Jim Filipovic
Operations Manager,
Wallis Cinemas
139 Richmond Road
RICHMOND SA 5033

Dear Mr Filipovic

Lease of the Chelsea Cinema

We refer to our letter of 30 June 2011 and the lease agreement between the City of Burnside (as lessor) (**Council**) and Riverline Drive-In Theatres Pty Ltd (as lessee) for the occupation of the Chelsea Cinema dated 20 February 1995 (**Lease**), which was the subject of that letter.

In that letter, we advised that the Council is currently considering its options for the future use of the Chelsea Cinema and adjacent properties. We further advised that it was the Council's intention not to permit you to continue to occupy the Chelsea Cinema premises after 31 December 2011.

Riverline Drive-In Theatres Pty Ltd currently occupies the Chelsea Cinema premises on a holding over basis. In accordance with clause 4.12.2 of the Lease, the Council hereby gives notice that this monthly holding over tenancy is terminated at midnight on 31 December 2011.

We note that pursuant to clauses 2.16.4 and 4.13 of the Lease, Riverline Drive-In Theatres Pty Ltd is required to remove all of its partitioning, fixtures, fittings, plant, machinery and other materials and articles from the leased premises and make good any damaged caused in doing so period to the end of the Lease. Can you please supply the Council with details of all fixture and fittings, plant and machinery that has been installed on the Premises by Riverline Drive-In Theatres Pty Ltd during the Lease term and confirm that these items will be removed by the end of the Lease. The Council will contact you closer to 31 December 2011 to arrange for an inspection to take place to confirm that the requirements of the Lease have been satisfied and for all keys and other security devices for the leased premises to be handed over to the Council.

As you may be aware, the Council is still considering its options for the future use of the Chelsea Cinema and adjacent sites. The Council will be considering this matter at its next meeting, which is to be held on 13 December 2011. Whilst the decision that may be made by the Council is completely at its discretion and its decision cannot be pre-empted, there could potentially be scope for your company to enter into a short term lease with the Council during the transition period to the new long term arrangements. You are welcome to submit to the Council an offer for a new short term lease of the Chelsea Cinema if you would like to do so for the Council's consideration at its 13 December 2011 meeting. Please note that if you would like to submit an offer for the Council's consideration, such offer must be received by the Council by **midday on 6 December 2011**. If you do choose to submit an offer, the Council's decision will be notified to you, and any relevant arrangements will be attended to by the Council, on or before 15 December 2011.

Please do not hesitate to contact us if you have any queries.

Yours faithfully

Barry Cant
Manager Facilities and Procurement

30 November 2011

Ms Leonie Milburn
C/O Chelsea Fashions
269, 275 and 277
Kensington Road
KENSINGTON PARK
SA 5086

Dear Ms Milburn

Lease of Shops 269, 275 and 277 Kensington Road, Kensington Park

We refer to our letter of 30 June 2011 and the lease agreements between the Council (as lessor) and you (as tenant) for the occupation of Shops A, B and C being 269, 275 and 277 Kensington Road, Kensington Park SA 5086 (**Shops**) from which you operate Chelsea Fashions (**Leases**).

In that letter, we advised that the Council is currently considering its options for the future use of the Chelsea Cinema, the Shops and adjacent properties. We further advised that it was the Council's intention not to permit you to continue to occupy the Chelsea Cinema premises after 31 December 2011.

We note that pursuant to the Leases, you are required to remove all additions and alterations you have made to the leased premises during the Term and make good any damage caused in doing so prior to the end of the Lease. You are also required to make good any damaged that you may cause in removing all tenant fixtures, fittings and other articles from the leased premise. The Council will contact you closer to 31 December 2011 to arrange for an inspection to take place to confirm that the requirements of the Lease have been satisfied and for all keys and other security devices for the leased premises to be handed over to the Council.

As you may be aware, the Council is still considering its options for the future use of the Chelsea Cinema, the Shops and adjacent sites. The Council will be considering this matter at its next meeting, which is to be held on 13 December 2011. Whilst the decision that may be made by the Council is completely at its discretion and its decision cannot be pre-empted, there could potentially be scope for you to enter into a short term lease with the Council during the transition period to the new long term arrangements. You are welcome to submit to the Council an offer for a new short term lease of the Shop if you would like to do so for the Council's consideration at its 13 December 2011 meeting. Please note that if you would like to submit an offer for the Council's consideration, such offer must be received by the Council by **midday on 6 December 2011**. If you do choose to submit an offer, the Council's decision will be notified to you, and any relevant arrangements will be attended to by the Council, on or before 15 December 2011.

Please do not hesitate to contact us if you have any queries.

Yours faithfully

Barry Cant
Manager Facilities and Procurement

30 November 2011

Ms Patricia Kumnick
39 May Terrace
KENSINGTON PARK
SA 5068

Dear Ms Kumnick

Lease of 39 May Terrace, Kensington Park

We refer to our letter of 30 June 2011 and the residential tenancy agreement between the Council (as lessor) and you (as tenant) for the occupation of 39 May Terrace, Kensington Park SA 5086 (**Lease**). We also refer to the notice that was given to you by the Council pursuant to the *Residential Tenancies Act 1995* ending the Lease as at 31 December 2011.

We will contact you closer to 31 December 2011 to arrange an inspection of the property and to collect the keys for the property from you.

As you may be aware, the Council is still considering its options for the future use of the Chelsea Cinema and adjacent sites, including 39 May Terrace. The Council will be considering this matter at its next meeting, which is to be held on 13 December 2011. Whilst the decision that may be made by the Council is completely at its discretion and its decision cannot be pre-empted, there could potentially be scope for you to enter into a short term lease with the Council during the transition period to the new long term arrangements. You are welcome to submit to the Council an offer for a new short term lease of 39 May Terrace if you would like to do so for the Council's consideration at its 13 December 2011 meeting. Please note that if you would like to submit an offer for the Council's consideration, such offer must be received by the Council by **midday on 6 December 2011**. If you do choose to submit an offer, the Council's decision will be notified to you, and any relevant arrangements will be attended to by the Council, on or before 15 December 2011.

Please do not hesitate to contact us if you have any queries.

Yours faithfully

Barry Cant
Manager Facilities and Procurement

1st December 2011

Barry Cant
Manager Facilities and Procurement
Burnside City Council

Dear Mr Cant,

Lease of Shops 269, 275 and 277 Kensington Road, Kensington Park

I refer to your letter dated 30 November 2011, notifying me of cessation of lease and my requirements thereof.

I note the letter also invites me to make formal application to continue tenancy on a casual/monthly basis for consideration by council on the 13th December, 2011.

I hereby make formal request and application to continue my tenancy at Shops 269,275 & 277 Kensington Road, Kensington Park 5068 , at the current rental rate.

It is my hope that council will grant my application to continue on an agreed tenancy, and the matter can be settled at the council meeting dated 13 December 2011.

Furthermore, I also request that at the council meeting on 13 December, I am permitted to make a verbal submission to council regarding my continued tenancy application.

Thankyou for your consideration in this matter, and please do not hesitate to contact me on the above details should you have any further enquiries in relation to this application and request.

Kind Regards,

Leonie G Milburn

Chelsea Fashions
269, 275 and 277 Kensington Road
Kensington Park SA 5068
0422 81 83 83
chelseafash@adam.com.au

5/12/12

Dear Mr Cant,

Lease of the Chelsea Cinema

I refer to your letter to me of 30 November 2011.

I write to inform you that Riverline Drive-In Theatres Pty Ltd (Wallis) wishes to remain in occupation of the Chelsea cinema until at least the end of January 2012.

The mechanism proposed for Wallis' continued occupation is simply a further holding over under the existing lease. This mechanism is suggested in order to minimise the legal costs associated with a new and short term lease for both council and Wallis.

I understand that it might also be possible for the council to agree to licence Wallis to continue to use the premises on the same terms as the existing lease. Such a licence would be acceptable to Wallis' but would also involve further wasted legal expense associated with the preparation of a licence agreement.

It is implicit in the suggestion of continued occupation that rent and all other terms of Wallis' occupation of the premises continue as proscribed by the existing lease (holding over).

I would add that given the time of year, and the extensive amount of plant and equipment owned by Wallis in the premises (see attached list), there will need to be a reasonable amount of time allowed for the removal of that plant and any associated "making good". I would also remind you that the cinema will as a result of the removal of the Wallis plant and equipment, be unable to operate as a cinema for a significant period of time.

I understand that a decision as to Wallis' extended occupation of the Cinema post 31 December 2011 will be made on 13 December. Given the time of year, I look forward to hearing from you as to the decision made by council as soon as possible after 13 December.

You will appreciate that Wallis has existing staffing, film and stock arrangements that it will need to modify depending on the decision council makes, and early notice from council as to its intentions would be appreciated.

Yours faithfully

Jim Filipovic
Operations Manager
Wallis Cinemas

Mitcham Cinemas
67119 Belair Road,
Torrens Park, 5062
P: 08 8305 4444

Auchendarroch House
and Wallis Tavern
7 Adelaide Road
Mount Barker, 5251
P: 08 8391 6100

Mount Barker Cinemas
17 Adelaide Road,
Mount Barker, 5251
P: 08 8391 2777

Piccadilly Cinemas
181 O'Connell Street,
North Adelaide, 5006
P: 08 8267 1500

Noarlunga Cinema Centre
40 - 42 David Witton Drive,
Noarlunga, 5168
P: 08 8326 1313

Chelsea Cinema
275 Kensington Road,
Kensington Park, 5068
P: 08 8431 5080

Mainline Drive-in
588 Main North Road,
Gepps Cross, 5094
P: 08 8262 1873

List of Items to be removed by Wallis. Cinemas on exiting the Chelsea Cinema

- 16.1 2 projectors;
- 16.2 2 DC rectifiers
- 16.3 1 Plater film transport system
- 16.4 12 6000' spools
- 16.5 5 sets of lighting dimmers
- 16.6 4 amplifiers
- 16.7 1 monitor amplifier including radio
- 16.8 1 hearing loop system for deaf patrons
- 16.9 1 stereophonic decoding system
- 16.10 7 sets of lenses
- 16.11 1 screen
- 16.12 1 stage curtain
- 16.13 3 backstage speakers
- 16.14 8 auditorium speakers
- 16.15 All air-conditioning systems
- 16.16 3 candy bar freezers
- 16.17 2 vacuum cleaners
- 16.18 1 hot water system
- 16.19 1 safe
- 16.20 1 Chelsea street sign
- 16.21 1 plastic advertising sign
- 16.22 1 copying machine
- 16.23 4 office chairs
- 16.24 1 fax machine
- 16.25 1 stool
- 16.26 1 extension ladder
- 16.27 3 step ladders
- 16.28 1 office air conditioner
- 16.29 1 office fridge
- 16.30 3 hand dryers
- 16.31 1 four station intercom phone system
- 16.32 1 heavy duty security screen door
- 16.32 1 Chubb Alarm system

Mr Barry Cant

Manager Facilities and Procurement

City of Burnside

P O Box 9 Glenside 5065

Ms Patricia Kumnick

39 May Terrace

Kensington Park 5068

0457634202

5 December 2011

Dear Barry

Thank you for the meeting with yourself and Simon Bradley on 30 November regarding the current situation of 39 May Terrace and the possibility of entering a short term lease agreement.

I appreciate the offer and here by submit my application for a new short term lease.

I have been looking and applying to the private rental market as well as the various housing organisations who in the long term offer more stability and affordability.

This offer would be very opportune, as over the Christmas holiday season many businesses, removalists and other organisations are either closed or have already been booked.

I am finding it a very stressful situation with the additional jobs of downsizing and packing without knowledge of the next accommodation, plus having the current property ready for inspection and collection of keys on 31 Dec.

Thank you for your offer and I hope for a favourable outcome.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'P Kumnick', followed by a period.

MEDIA RELEASE

Wednesday, 14 December 2011

Chelsea Cinema Update

The City of Burnside is continuing with the process of securing a lease for the Chelsea Cinema.

"Council is attending to the process very thoroughly," said Mayor David Parkin.

"Council is mindful of the interest of the community in the process surrounding Chelsea Cinema but it regards confidentiality at this time to be of fundamental importance to the proper discharge of its obligations."

"Once the process has been finalised, Council will advise its community of its decision."

Expressions of Interest for the lease of all, or some, of the Chelsea Cinema (the Cinema, the non-Cinema parts of the building, the adjacent land to the east and the residential property at 39 May Terrace), commenced in July 2011 and Council is continuing negotiations with selected parties.

The confidential discussions ensure that the Expressions of Interest process is not compromised by participants obtaining information about the identity of parties who have submitted an application to lease Chelsea Cinema. Confidentiality will also ensure details of any offer submitted to Council will not be released publicly until the appropriate time.

As part of the Expression of Interest process, Council resolved that vacant possession of the site would be granted from 1 January 2012.

Council has advised all tenants of the steps taken toward seeking Expressions of Interests from potential lessees for possession of the entire Chelsea Cinema Precinct.

This has been done both formally (by way of letter) and also by direct consultation with Council staff managing the EOI process.

Council has provided each tenant with six months notice to vacate the premises, which meets or exceeds the minimum notification requirements of Council. All of the existing leases cease on 31 December 2011.

Any possible new lease arrangements for existing tenants will be a matter for consideration by the Council and the future lessee of the Chelsea Cinema Precinct.

Mayor David Parkin added "Council has had a long partnership with all of its tenants on the site, and we would like to wish them well with their future endeavours. That is especially so of the Wallis Group, who first entered into a lease with Council in 1971. The Wallis family and Manager Bob Parr, have been instrumental in the longevity and success of that relationship, particularly in regards to providing the venue to many community groups for fundraising opportunities."

"It is now the responsibility of the Council and its next tenants to build on that excellent community provision, while ensuring that this significant heritage building is maintained accordingly and a successful business operates from it."

“This whole process has been managed to ensure that the Cinema is returned to its glory days, ensuring the revival of the much loved Art-Deco building. Council has maintained that the Cinema will remain as an operational cinema; it will be retained in Council ownership; and it will remain an operational asset for the benefit of the community.”

The very diligent and careful process that Council has undertaken will ensure that these objectives remain at the forefront of the City of Burnside decision making process for the future of the building”

For all media inquiries please contact Alisha Gangell, Communications Officer, City of Burnside on 8366 4181 or agangell@burnside.sa.gov.au.

Issued by:

Paul Deb
CEO
City of Burnside