

LEASE AGREEMENT

[Property Description (if applicable)]

CITY OF BURNSIDE

[Lessee]

DATE

PARTIES

CITY OF BURNSIDE of 401 Greenhill Road, Tusmore, SA 5065 (**Council**)

[Lessee] of #. (**Lessee**)

BACKGROUND

- A. The Council is the registered proprietor of, or has the care, control and management of, the Land.
- B. The Lessee has requested a lease to use the Premises for the Permitted Use.
- C. The Council has resolved to grant the Lessee a lease of the Premises and (if necessary) undertaken public consultation and/or been granted Parliamentary approval in accordance with the *Local Government Act 1999*.
- D. The Council and Lessee wish to record the terms of their agreement in this Lease.

AND THE PARTIES AGREE as follows:

1. **ACKNOWLEDGEMENT OF BACKGROUND**

The preceding statements are accurate and form part of this Lease.

2. **DEFINED TERMS AND INTERPRETATION**

2.1 **Introductory**

In the Lease, unless the contrary intention appears:

- 2.1.1 a reference to this Lease is a reference to this document;
- 2.1.2 words beginning with capital letters are defined in clause 2.2;
- 2.1.3 a reference to a clause is a reference to a clause in this Lease;
- 2.1.4 a reference to an Item is a reference to an item in the First Schedule;
- 2.1.5 a reference to a Schedule is a reference to a schedule of this Lease;
and
- 2.1.6 a reference to an Annexure is a reference to an annexure to this Lease.

2.2 Defined Terms

In this Lease:

Act means the *Retail and Commercial Leases Act 1995*.

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 Council under this Lease (other than tax payable under clause 21).

Bank Guarantee means an irrevocable and unconditional undertaking acceptable to the Council given by an Australian trading bank carrying on business in South Australia to pay the Council on demand the amount in Item 11 and including any addition or replacement to it under clause 22.

Building means the interior and exterior of all present and future improvements on the Land and includes all Building Services and Common Areas and all other conveniences, services, amenities and appurtenances of in or to the Building.

Building Services includes all services (including gas, electricity, water, sewerage, lifts, escalators, communications, fire control, air-conditioning, plumbing and telephone and all plant, equipment, pipes, drains, wires and cables in connection with them as applicable) to or of the Building or any premises in or on the Land supplied by any authority, the Council or any other person the Council authorises.

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 3.

Common Areas means all areas of the Land which are not leased or tenanted and which are for common use by tenants and lessees of the Land and their invitees and customers including driveways, car parks, walkways, washrooms, toilets, lifts and stairways.

Council means the party described as "Council" in this Lease and where the context permits includes the employees, contractors, agents and other invitees of the Council.

Council's Equipment means all fixtures and fittings, plant, equipment, services, chattels and other goods installed or situated in or on the Premises and made available for use by the Lessee.

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 6.3.

Current CPI means for a CPI Review Date, the CPI number for the quarter ending immediately before that 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 Building or 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 Council 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 Land at the expense of either the Lessee or the Council 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 charged by the Council's bank on overdraft accounts of less than \$100,000.00 plus 2 per centum per annum calculated and adjusted daily.

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

GST has the same meaning as 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 ancillary or similar legislation.

GST Rate means 10% or such other percentage equal to 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 described in Item 3.

Land means the land described in Item 2 and includes any part of the Land.

Legislation includes any relevant Statute or 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” in this Lease and where the context permits includes the employees, contractors, agents, customers 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.

Lessee's Share means the proportion the lettable floor area of the Premises bears from time to time to the total lettable floor area of the Building as measured in accordance with the method of measurement recommended for such Premises by the guidelines issued by the Institute current as at the Commencement Date or such other Institute method of measurement as the Council notifies the Lessee.

Maintenance Schedule means the maintenance schedule attached as Annexure B.

Outgoings means the outgoings described in Item 7.

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

Permitted Use means the use described in Item 8.

Premises means the premises described in Item 1 including the Council'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, other department or authority having the power to raise or levy any such amounts in respect of the use, ownership or occupation of the Land or 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 in Item 4.

Rent means the rent described in Item 5.

Review Date means each date in Item 6.

Review Method means the relevant method of rent review in Item 6 for any Review Date.

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

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

Term means the Initial Term, the Renewal Term and any period 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:

- (a) who will be appointed as agreed by the Council 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 Council or the Lessee, by the person holding or acting in the position of President of the Institute;
- (b) who must have practiced as a valuer with a minimum of 5 years relevant experience;
- (c) who is licensed to practice as a valuer of the kind of premises in respect of which the review is required; and
- (d) who must act 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.

2.3 Interpretation

Unless the contrary intention appears:

- 2.3.1 headings are for convenience only and do not affect interpretation;
- 2.3.2 the singular includes the plural and vice-versa;
- 2.3.3 a reference to an individual or person include a corporation, partnership, joint venture, authority, trust, state or government and vice versa;
- 2.3.4 a reference to any party in this Lease, or any other document or arrangement referred to in this Lease, includes that party's executors, administrators, substitutes, successors and assigns;
- 2.3.5 a reference to any document (including this Lease) is to that document as varied, novated, ratified or replaced from time to time;
- 2.3.6 a reference to any Legislation includes any statutory modification or re-enactment of it or any Legislation substituted for it, and all by-laws, regulations and rules issued under it;
- 2.3.7 a reference in this Lease to the Council's approval or consent, is to the Council's prior written approval or consent which may be granted or withheld in the absolute discretion of the Council;
- 2.3.8 "including" and similar expressions are not and must not be treated as words of limitation;

- 2.3.9 the covenants and powers implied in leases by virtue of Sections 124 and 125 of the *Real Property Act 1886* will apply and be implied in this Lease unless they are expressly or impliedly excluded or modified; and
- 2.3.10 any special condition in the Second Schedule will apply to this Lease and in the event of any inconsistency with the terms and conditions in the body of this Lease, then those special conditions will prevail.

2.4 **Retail and Commercial Leases Act**

- 2.4.1 If the Act applies to this Lease, then this Lease will be read and interpreted subject to the provisions of the Act and, to the extent to which there is any inconsistency with the provisions of the Act, those provisions of the Act will override the terms of this Lease.
- 2.4.2 Any right, power or remedy of the Council or obligation or liability of the Lessee that is affected by the Act (if applicable) will be unenforceable or void but only to the extent that it is expressly made unenforceable or void by the Act.

3. **GRANT OF LEASE**

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

4. **TERM LESS THAN 5 YEARS**

- 4.1 This clause only has effect where:
 - 4.1.1 the Act applies to this Lease; and
 - 4.1.2 the Term is less than 5 years.
- 4.2 The Council and the Lessee acknowledge and agree that:
 - 4.2.1 the Term is less than 5 years; and
 - 4.2.2 Section 20B of the Act does not apply to this Lease for the Term (including without limitation any holding over period which exceeds 6 months).
- 4.3 The Lessee acknowledges that:
 - 4.3.1 the Lessee has received independent legal advice to explain the effect of and how Section 20B of the Act would apply but for this Lease containing a provision excluding the operation of that section;
 - 4.3.2 the Lessee was not acting under coercion or undue influence in requesting or consenting to the inclusion of such provision; and
 - 4.3.3 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 the inclusion of such provision when instructing the Lessee's lawyer in relation to such provision.

5. RENT

5.1 Payment of Rent

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

5.2 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.

6. RENT REVIEWS

6.1 Fixed Review Amount

Where the Review Method for any Review Date is a Fixed Review, 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 after 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 6 in relation to that Review Date

6.2 CPI Review

Where the Rent is to be reviewed to a CPI Review, the Rent on and from that Review Date is calculated as follows:

$$R_2 = R_1 \times \frac{\text{CurrentCPI}}{\text{PreviousCPI}}$$

Where:

R_2 is the Rent after the Review Date; and

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

6.3 Change to CPI Index

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. The parties must each pay one half of the President's costs for nominating an index.

6.4 **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.

6.5 **Current Market Rent**

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

6.5.2 The Rent from and including the relevant Review Date is the amount stated in the Council's notice under clause 6.5.1 unless the Lessee gives the Council written notice disagreeing with that amount (**Objection**) within 14 days after the Council's notice.

6.5.3 If the Lessee gives the Council an Objection, then the Rent must be determined by a Valuer.

6.5.4 The Valuer must determine the Current Market Rent under this clause.

6.5.5 The Council and the Lessee may make written submissions to the Valuer within 14 days after the Valuer is appointed.

6.5.6 Each party must forward to the other a copy of all written material provided to the Valuer when it is provided to the Valuer.

6.5.7 Within 14 days after receiving those written materials, a party may give written comments to the Valuer on the other party's written submissions.

6.5.8 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.

6.5.9 If the Valuer's determination is more than the Council's assessment of the Current Market Rent, 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 Council and Lessee.

6.6 **Rent Pending Determination**

6.6.1 The Rent may be reviewed at any time from a Review Date even if the review is instituted after that Review Date.

6.6.2 If the Rent to apply on and from a Review Date has not been agreed on 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.

6.7 **Adjustment Once Rent Determined**

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

6.8 No Decrease in Rent

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

6.9 Other Review

Subject to the Act, nothing in this Lease prevents the Council and Lessee negotiating and agreeing on a Rent to apply from a Review Date without following this clause 6.

7. RATES AND TAXES AND OUTGOINGS

7.1 Liability for Rates and Taxes

7.1.1 Subject to clause 7.3, the Lessee must pay or reimburse the Council all Rates and Taxes levied, assessed or charged in respect of the Premises or upon the owner or occupier of the Premises.

7.1.2 The Rates and Taxes must be adjusted between the Council and the Lessee as at the Commencement Date and the end or termination date of this Lease.

7.2 Payment of Outgoings

7.2.1 Subject to clause 7.3, the Lessee must pay or reimburse the Council all Outgoings levied, assessed or charged in respect of the Premises or upon the owner or occupier of the Premises.

7.2.2 The Outgoings shall be adjusted between the Council and the Lessee as at the Commencement Date and the end or termination date of this Lease.

7.3 Lessee's Proportion

If any of the Rates and Taxes or Outgoings are not separately assessed or charged in respect of the Premises, then the Lessee must pay the Lessee's Share of any such Rates and Taxes or Outgoings assessed or charged in respect of the Premises.

7.4 Sinking Fund

7.4.1 The Council may require the Lessee to establish a sinking fund to fund provision for major items of repair or maintenance to the Premises.

7.4.2 The Lessee must advise the Council in writing of the establishment of any such sinking fund.

7.4.3 The contribution to be made by the Lessee to the Lessee's sinking fund is set out in Item 12.

7.4.4 All of the following provisions apply to any sinking fund established under this clause 7:

7.4.4.1 the Lessee will establish a separate fund for such moneys and all monies paid by the Lessee in this regard will be paid into that fund;

- 7.4.4.2 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 will be held by the Lessee in a separate interest bearing account with an Australian trading bank carrying on business in South Australia;
- 7.4.4.3 the Lessee, upon the request of the Council, must provide the Council with a copy of the Lessee's most recent bank statement for the separate interest bearing account in which the money is held;
- 7.4.4.4 the Council retains the discretion to determine:
- (a) if there are major items of repair or maintenance required in relation to the Premises requiring contribution from the sinking fund for such repair and/or maintenance; and
 - (b) when any money from the sinking fund will be withdrawn by the Lessee;
- 7.4.4.5 any amounts paid by the Lessee for credit of that fund, and the net interest earned by the Lessee on that fund, will not be applied by the Council for any purpose other than that for which the fund was established.

7.5 Power and Other Utilities

- 7.5.1 The Lessee will pay when they are due for payment, all costs for the use of telephone, light and other facilities and the consumption of electricity, gas, and any and all other services and utilities supplied to or used from the Premises.
- 7.5.2 If there is no separate meter for recording or measuring the services and utilities consumed on or from the Premises, then the Lessee must, if required by the Council, install the necessary meters at its own cost.
- 7.5.3 Without limiting the generality of this clause 7.5, the Lessee will comply in all respects with the *Electricity (General) Regulations 1997* and any other applicable electricity laws.

8. USE OF PREMISES

8.1 Permitted Use

The Lessee must use the Premises only for the Permitted Use and must not use or allow the Premises to be used for:

- 8.1.1 residential purposes; or
 - 8.1.2 any other use;
- (without the Council's consent).

8.2 **Offensive Activities**

The Lessee must not carry on any offensive or dangerous activities on or from the Premises or create a nuisance or disturbance either:

8.2.1 for the Council; or

8.2.2 for the owners or occupiers of any adjoining property; and

must ensure at all times that activities conducted on or from the Premises will not bring any discredit upon the Council.

8.3 **Use of Facilities**

8.3.1 The Lessee will ensure that the Building Services are used carefully and responsibly and in accordance with any directions that may be given by the Council from time to time.

8.3.2 The Lessee will be responsible to repair or correct any damage or malfunction which results from any misuse or abuse of the Building Services by the Lessee.

8.4 **Statutory Requirements**

The Lessee must comply with all Statutory Requirements (including any obligations under the *Work Health and Safety Act 2012*) relating to:

8.4.1 the Lessee's use and occupation of the Premises;

8.4.2 the nature of the Permitted Use conducted on the Premises by the Lessee.

8.5 **Alcohol and Gaming**

8.5.1 The Lessee agrees:

8.5.1.1 that the Lessee will not apply for a gaming machine licence under the *Gaming Machines Act 1992* in respect of the Premises during the Term; and

8.5.1.2 that the Lessee will not do any thing that is in breach of the *Gaming Machines Act 1992* in respect of the Premises during the Term.

8.5.2 Unless the Lessee first obtains the written consent of the Council, the Lessee must not apply for a liquor licence under the *Liquor Licensing Act 1997*.

8.5.3 If the Lessee obtains a liquor licence 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):

8.5.3.1 do any thing that is in breach of the *Liquor Licensing Act 1997* or of the conditions of the liquor licence; or

- 8.5.3.2 do anything that may result in the liquor licence being revoked or suspended;
 - 8.5.3.3 assign the liquor licence;
 - 8.5.3.4 apply to remove the liquor licence;
 - 8.5.3.5 allow a liquor licence to be granted to another person in respect of the Premises or any part of the Premises; or
 - 8.5.3.6 apply to vary or revoke any conditions of the liquor licence.
- 8.5.4 At or before the expiry or early termination of this Lease, the Lessee must:
- 8.5.4.1 give any notices the Council requires to renew or assign the liquor licence;
 - 8.5.4.2 allow those notices to be affixed as and for the period required by the *Liquor Licensing Act 1997*;
 - 8.5.4.3 assign the liquor licence to the Council or the Council's nominees if required to do so by the Council; and
 - 8.5.4.4 do anything else that may be required to affect the renewal or assignment of the liquor licence.

8.6 Signs

The Lessee must not place any signs or advertisements on the outside or inside (if they can be seen from outside) of the Premises, except a sign or signs which:

- 8.6.1 are approved by the Council; and
- 8.6.2 comply with any relevant Statutory Requirements.

8.7 Dangerous Equipment and Installations

The Lessee may only install or use within the Premises equipment and facilities which are reasonably necessary for and normally used in connection with the Permitted Use and will not install or bring onto the Premises:

- 8.7.1 any electrical, gas powered or other machinery or equipment that may pose a danger, risk or hazard;
- 8.7.2 any chemicals or other dangerous substances that may pose a danger, risk or hazard; or
- 8.7.3 any heavy equipment or items that may damage the Premises or Building.

8.8 Fire Precautions

The Lessee must:

- 8.8.1 comply with all requirements and directives of the Council with regard to fire safety systems and procedures including fire evacuation drills and other procedures; and
- 8.8.2 comply with all Statutory Requirements relating to fire safety systems and procedures including any structural works or modifications or other building works which are required as a consequence of the Lessee's particular use of the Premises.

8.9 **Security**

- 8.9.1 The Lessee must keep the Premises securely locked at all times when the Premises are not occupied and must provide two (2) keys to the Premises and/or any disarm and entry codes for any security systems installed on the Premises to the Council (or if the Council has engaged a manager, then to the manager) to be used only in the case of emergencies.
- 8.9.2 The Lessee is required to keep a register of keys issued for the Premises and to make a copy of this available to the Council on demand. The Lessee remains liable for the use of all keys issued in respect of the Premises.
- 8.9.3 During the term of this lease, the Lessee must not permit any keys to the Premises to enter into the possession or control of any person other than the Lessee at any time.
- 8.9.4 Upon the expiry or earlier determination of this Lease, the Lessee must immediately return all keys to the Premises in the Lessee's possession or control to the Council.

8.10 **No Warranty**

The Council makes no warranty or representation regarding the suitability of the Premises (structural or otherwise) for the Permitted Use or any other purpose.

9. **INSURANCE**

9.1 **Lessee must insure**

The Lessee must keep current during the Term:

- 9.1.1 public risk insurance for at least the amount in Item 9 (or any other amount the Council reasonably requires) for each claim;
- 9.1.2 building insurance, whether on a fee for service basis through the Council or through the Lessee's preferred insurer (subject to clause 9.2.1);
- 9.1.3 all insurance in respect of the Lessee's Equipment for its full replacement value; and
- 9.1.4 other insurances required by any Statutory Requirement or which the Council reasonably requires.

9.2 Requirements for policies

Each policy the Lessee takes out under this clause 9 must:

- 9.2.1 be with an insurer and on terms reasonably approved by the Council;
- 9.2.2 be in the name of the Lessee and note the interest of the Council and any other person the Council requires;
- 9.2.3 cover events occurring during the policy's currency regardless of when claims are made; and
- 9.2.4 note that despite any similar policies of the Council, the Lessee's policies will be primary policies.

9.3 Evidence of Insurance

The Lessee must give the Council certificates evidencing the currency of the policies the Lessee has taken out under this clause 9. During the Term the Lessee must:

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

9.4 Insurance affected

- 9.4.1 The Lessee must not do anything which may:
 - 9.4.1.1 prejudice any insurance of the Premises or the Building; or
 - 9.4.1.2 increase the premium for that insurance.
- 9.4.2 If the Lessee does anything (with or without the Council's consent) that increases the premium of any insurance the Council has in connection with the Premises or the Building, the Lessee must on demand pay the amount of that increase to the Council.

9.5 Proceeds of insurance

Any proceeds of a claim received by the Council or the Lessee pursuant to a policy of insurance covering the Premises shall be applied toward the reinstatement, building, repair or replacement of the Premises. The Lessee must also pay, on demand, to the Council an amount equivalent to any excess or similar payment due, paid or payable by the Council in respect of any claim made under the policy.

10. STAFF AND VOLUNTEER REGISTRATION

The Lessee will ensure that all staff or volunteers operating for or on behalf of the Lessee who offer coaching or technical advice remain duly qualified, trained and registered with any and all relevant bodies and that records of such are maintained by the Lessee.

11. REPAIR AND MAINTENANCE

11.1 Repair

11.1.1 The Lessee must keep, maintain, repair and replace the Premises, the Lessee's Equipment and any Building Services situated within the Premises and which exclusively services the Premises in good repair and in accordance with the Maintenance Schedule.

11.1.2 If the Council requires the Lessee to do so, the Lessee must promptly repair any damage caused or contributed to by the act, omission, negligence or default of the Lessee.

11.2 Maintain and replace

The Lessee must maintain, repair or replace items in or attached to the Premises which are damaged or worn with items of the same or similar quality to those in use when they were last replaced with the Council's approval, or if they have not been so replaced, to those in use at the Commencement Date.

11.3 Alterations by Lessee

11.3.1 The Lessee must not carry out any alterations or additions to the Premises without Council's consent.

11.3.2 The Lessee must provide full details of the proposed alteration and additions to the Council.

11.3.3 The Council may impose any conditions it considers necessary if it gives its approval, including requiring the Lessee to obtain the Council's consent to any agreements that the Lessee enters into in relation to the alterations or additions.

11.3.4 The Lessee must carry out any approved alterations and additions:

11.3.4.1 in a proper and workmanlike manner;

11.3.4.2 in accordance with the conditions imposed by the Council and with the approvals made by Council in its capacity as lessor under this Lease;

11.3.4.3 in accordance with all Statutory Requirements; and

11.3.4.4 in a way to minimise disturbance to others.

11.3.5 Unless otherwise agreed in writing between the parties, all alterations and additions to the Land or the Premises made pursuant to this clause will be or become the property of the Council.

- 11.3.6 The Lessee will pay all of the Council's costs (including consultant's costs and legal costs) as a result of the Lessee's alterations and additions.

11.4 Refurbishment, re-fitting and redecoration

The Lessee must refurbish, re-fit and redecorate the Premises on or before each of the dates specified in Item 10 to the following specification:

- 11.4.1 clean and repair all surfaces to be redecorated;
- 11.4.2 paint (with at least 2 coats) or wallpaper, stain, varnish or polish each surface to be redecorated according to the previous treatment of that surface; and
- 11.4.3 replace the signage, floor coverings, ceilings, lighting and fixtures and fittings with new items.

11.5 Cleaning

The Lessee must:

- 11.5.1 keep and maintain the Premises in a clean and sanitary condition;
- 11.5.2 keep the Premises free of vermin, insects and other pests;
- 11.5.3 not cause the Common Areas to be left untidy or in an unclean state or condition;
- 11.5.4 store and keep all waste materials and garbage in proper clean receptacles, maintaining all receptacles in a hygienic manner and arranging (at the Lessee's cost and expense in all things) the regular removal thereof from the Premises;
- 11.5.5 keep bins larger than 240 litres screened from casual view;
- 11.5.6 comply with all food safety Legislation and policies; and
- 11.5.7 permit annual inspection of the Premises by the relevant health authority and provide evidence to the Council.

11.6 Vegetation

- 11.6.1 The Lessee must maintain at all times and must not cause, permit, suffer or allow to be destroyed or damaged in any way all trees, landscaped areas, grassed areas, lawns, vegetation, foliage and flora on and about the Premises.

11.7 Plumbing and Drainage

- 11.7.1 The Lessee must keep and maintain in good condition and free from blockage all Building Services constituting pipes or drains of any kind.
- 11.7.2 The Lessee must rectify or repair any blockage or damage to any Building Services constituting pipes and drains of any kind from outlets or faucets to the branching connection from the main supply that the

Council reasonably believes was caused or substantially contributed to by the Lessee.

- 11.7.3 The parties agree that this clause 11.7 does not limit any other obligation imposed on the Lessee pursuant to this Lease.

12. TRANSFERRING, SUBLETTING AND CHARGING

12.1 Transfer

The Lessee may, subject to the Act, only transfer its interest in this Lease provided:

- 12.1.1 the proposed transferee does not change the Permitted Use;
- 12.1.2 the proposed transferee is able to meet the financial obligations under the Lease; and
- 12.1.3 the Lessee has complied with the Council's procedural requirements for obtaining the Council's consent.

12.2 Subletting

The Lessee must not sublet or sublicense any part of the Premises.

12.3 Charging

- 12.3.1 The Lessee must not charge the Lessee's interest in this Lease or the Lessee's Equipment without the Council's consent.
- 12.3.2 If the Council consents to a charge on the Lessee's Equipment then the Lessee must enter into a deed in a form required by the Council that ensures the charge is subject to the Council's rights under this Lease.

12.4 Hiring out of Premises

The Lessee must not hire out or otherwise part with possession of the Premises unless the Lessee enters into a written hire agreement (**Hire Agreement**) with the applicant (**Applicant**) which includes the following terms:

- 12.4.1 that the Applicant must provide the Lessee with a copy of all permits, certificates and any other authorisations which may be required from the Council or some other governmental, civic or municipal authority for any activity the Applicant undertakes or permits to be undertaken on the Premises;
- 12.4.2 that the Applicant must not serve, sell or provide to persons, or persons to consume alcohol without the Council's prior approval;
- 12.4.3 that the Applicant indemnifies the Lessee from and against all actions, costs, claims and damages which may be brought or claimed against the Lessee arising out of or in relation to any activity the Applicant undertakes or permits to be undertaken on the Premises;

- 12.4.4 that the Applicant releases the Lessee from any liability or claim resulting directly or indirectly from any accident, damage, loss or injury occurring or arising from any activity the Applicant undertakes or permits to be undertaken on the Premises;
- 12.4.5 that the Applicant takes out and maintains a public risk insurance policy from a reputable insurer in the name of the Applicant for a minimum amount of \$20,000,000.00 per claim or such other amount as the Council reasonably requires;
- 12.4.6 that the Applicant cannot in any way transfer or assign the Hire Agreement unless permitted by the Council;
- 12.4.7 that the Hire Agreement does not in any way confer on the Applicant any exclusive right, entitlement or proprietary interest in the Premises;
- 12.4.8 that upon the expiration of the Hire Agreement, the Applicant must return the Premises to its condition prior to the Hire Agreement being granted (including removing any fixture, fitting or property erected or installed on the land);
- 12.4.9 that the Applicant must not engage in or permit offensive or lewd behaviour and must observe any direction or instruction given to the Applicant by the Lessee or the Council;
- 12.4.10 that the Applicant (or the Applicant's volunteers, employees, agents or guardian where context permits) be present at the Premises at all times during the event for which the Hire Agreement is sought by the Applicant; and
- 12.4.11 that the Applicant must not breach or cause or permit another entity to breach any term of this Lease.

12.5 **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, will be deemed to be an assignment of the Premises requiring the consent of Council under this Lease.

12.6 **Costs**

The Lessee must pay all costs reasonably incurred by the Council (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 under this clause 12.

13. **LESSEE GOVERNANCE**

- 13.1 On or before the Commencement Date the Lessee must provide to the Council a copy of its constitution and any other documents that regulate the governance and operations of the Lessee.

- 13.2 As and when the Council may reasonably require, the Lessee must provide to the Council such information in relation to the Lessee's use and occupation of the Premises as required by the Council including financial information of the Lessee.

14. COUNCIL'S OBLIGATIONS AND RIGHTS

14.1 Quiet Enjoyment

Subject to the Council'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 Council.

14.2 Right to enter

The Council may (except in the case of emergency when no notice will be required) enter the Premises after giving the Lessee reasonable notice:

- 14.2.1 to see the state of repair of the Premises;
- 14.2.2 to do repairs to the Premises or the Building or other works which cannot reasonably be done unless the Council enters the Premises;
- 14.2.3 to do anything the Council must or may do under this Lease or must do under any Legislation or to satisfy the requirements of any Statutory Authority; and
- 14.2.4 to show prospective lessees through the Premises.

14.3 Emergencies

In an emergency the Council may:

- 14.3.1 close the Premises or Building; and
- 14.3.2 prevent the Lessee from entering the Premises or Building.

14.4 Works and Restrictions

14.4.1 The Council may:

- 14.4.1.1 install, use, maintain, repair, alter, and interrupt Building Services;
- 14.4.1.2 carry out works on the Building (including extensions, renovations and refurbishment); and
- 14.4.1.3 close (temporarily or permanently) and restrict access to the Common Areas.

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

14.5 **Right to Rectify**

Council 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 Council reasonably considers the Lessee has not done properly.

15. **DAMAGE OR DESTRUCTION**

15.1 **Termination for destruction or damage**

15.1.1 If the Premises is destroyed or is damaged so that the Premises is unfit for the Lessee's use then within three (3) months after the damage or destruction occurs, the Council must give the Lessee a notice either:

15.1.1.1 terminating this Lease (on a date at least one (1) month after the Council gives notice); or

15.1.1.2 advising the Lessee that the Council intends to repair the Premises and/or the Building so that the Premises are accessible and the Lessee can occupy and use the Premises.

15.1.2 If the Council gives a notice under clause 15.1.1.2 but does not carry out the intention within a reasonable time, the Lessee may give notice to the Council that the Lessee intends to end the Lease if the Council does not do whatever is necessary to 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).

15.1.3 If the Council does not comply with clause 15.1.1 or with the Lessee's notice under clause 15.1.2, the Lessee may end this Lease by giving the Council not less than one (1) month's notice.

15.2 **Reduction or Abatement of Rent**

15.2.1 The Yearly Amounts to be paid by the Lessee will during the period the Premises are unfit or inaccessible be reduced unless:

15.2.1.1 the Premises are unfit or inaccessible; or

15.2.1.2 an insurer refuses to pay a claim;

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

15.2.2 The level of the reduction (if any) will depend on the nature and extent of the damage.

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

16. **REDEVELOPMENT, ASSET RATIONALISATION AND DEMOLITION**

If as part of any redevelopment, asset rationalisation or other project conducted by the Council that includes the Land (**Redevelopment**), or for any other reason, the Council

wishes to demolish or acquire vacant possession of the Premises or any part of the Premises, then the Council will be entitled to:

- 16.1 terminate this Lease subject to the following provisions:
 - 16.1.1 the Council must provide the Lessee with details of the proposed Redevelopment sufficient to indicate a genuine proposal to carry out that Redevelopment within a reasonably practical time after this Lease is to be terminated;
 - 16.1.2 the Council may at any time after providing the Lessee with the information specified in clause 16.1.1, give the Lessee a written notice of termination of this Lease (**Termination Notice**) specifying the date on which this Lease is to come to an end being a date not less than 6 months after the Termination Notice is given. This Lease will, unless terminated earlier by the Lessee under clause 16.1.3, come to an end at midnight on the day specified in the Termination Notice;
 - 16.1.3 at any time after receiving a Termination Notice under clause 16.1.1, the Lessee may terminate this Lease by giving not less than 7 days' written notice to the Council; and
 - 16.1.4 when this Lease is terminated (whether by the Council under clause 16.1.2 or by the Lessee under clause 16.1.3), the rights and obligations of the Council and the Lessee hereunder will come to an end but if any breach by either party still exists at that time then the rights of the other party with regard to that existing breach will continue; or
- 16.2 require the Lessee, upon reasonable notice, to vacate the Premises and to occupy an alternative site owned by the Council from the Premises subject to the following conditions:
 - 16.2.1 the Council must provide the Lessee with details of the proposed Redevelopment sufficient to indicate a genuine proposal to carry out that Redevelopment within a reasonably practical time after this Lease is to be terminated;
 - 16.2.2 the Council may at any time after providing the Lessee with the information specified in clause 16.2.1, give the Lessee a written notice of termination of this Lease (**Relocation Notice**) specifying the date on which the Lessee must relocate being a date not less than 6 months after the Relocation Notice is given.
 - 16.2.3 the Lessee must relocate to the alternative site on the date stipulated in the Relocation Notice and shall give to the Lessee all such assistance and cooperation as may be necessary to give effect to this clause and to the relocation including the execution of any documents or instruments which the Lessee reasonably requires;
 - 16.2.4 the alternative site must, in the reasonable opinion of the Council, be of comparable quality and utility to the Premises;
 - 16.2.5 any reasonable costs incurred in relocating the Lessee shall be borne by the Council; and

16.2.6 the Lessee's occupation of the alternative site will be on the terms and conditions of this Lease with such amendments as are necessary for the terms and conditions of this Lease to apply to the Lessee's occupation of the alternative site; or

16.3 negotiate with the Lessee as to the necessary financial and maintenance contribution which is required from the Lessee in order for the Council to reconsider undertaking the Redevelopment. The Council may, at any reasonable time during these negotiations exercise any of its other rights under this clause 16.

17. RENEWAL

17.1 If a right of renewal has been granted to the Lessee as described in Item 4, the Lessee shall be deemed to have exercised their right to renew of this Lease for the additional term described in Item 4 unless the Lessee serves the Council with written notice stating the Lessee's intention not to renew this Lease before the expiry of the Initial Term, or if Item 4 provides for more than one right of renewal, before the expiry of the preceding Renewal Term (whichever is applicable).

17.2 The Lessee will not be entitled to a right of renewal if:

17.2.1 the Lessee has been in breach of this Lease at any time before giving notice of the Lessee's exercise of the right of renewal;

17.2.2 the Lessee is in breach of the Lease at the time of giving that notice; or

17.2.3 the Lessee is in breach or commits a breach of this Lease after giving notice but before commencement of the Renewal Term.

18. RIGHTS AND OBLIGATIONS ON EXPIRY

18.1 Expiry

This Lease will come to an end at midnight on the last day of the Term unless it is terminated earlier by the Council or the Lessee under any other provision of this Lease.

18.2 Handover of Possession

18.2.1 Before this Lease comes to an end, the Lessee will:

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

18.2.1.2 no later than 1 month before this Lease comes to an end, provide the Council with a written summary of all alterations and additions made to the Premises by the Lessee, whether those alterations and additions were authorised by the Council or not;

18.2.1.3 if required by the Council, remove and reinstate any alterations or additions made to the Premises by the Lessee;

18.2.1.4 refurbish the Premises as required under clause 11.4; and

18.2.1.5 complete any repairs which the Lessee is obliged to carry out under this Lease.

18.3 Abandoned Goods

If, when this Lease comes to an end, the Lessee leaves any goods or equipment at the Premises, then the Council will be entitled to deal with and dispose of those goods subject to and in accordance with the requirements of the Act.

18.4 Holding Over

If, with the Council's consent, the Lessee continues to occupy the Premises after the end of this Lease, the Lessee does so as a monthly tenant which:

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

18.4.2 is on the same terms as this Lease.

19. BREACH

19.1 Payment Obligations

19.1.1 The Lessee must make payments due under this Lease:

19.1.1.1 without demand (unless this Lease provides demand must be made);

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

19.1.1.3 to the Council or as the Council directs; and

19.1.1.4 by direct debit or such other means as directed by the Council.

19.1.2 If a payment is stated to be due on a particular Payment Date (such as the next Payment Date or the first Payment Date after an event) and there is no such Payment Date, the Lessee must make that payment on demand.

19.2 Set Off

The Council may, by notice to the Lessee, set off against any amount due and payable under this Lease by the Council to the Lessee, any amount due and payable by the Lessee to the Council under this Lease or under any other agreement or arrangement.

19.3 Council's Rights on Breach

19.3.1 If the Lessee is at any time in breach of any of its obligations under this Lease, and the Lessee fails to remedy that breach to the satisfaction of the Council after being requested by the Council to do so, the Council and anybody authorised by the Council for that purpose may at any time thereafter come onto the Premises without notice and do all things necessary to remedy that breach.

- 19.3.2 The Lessee will be liable to pay or reimburse the Council for all costs and expenses incurred in that regard which the Council may recover from the Lessee as a debt due and payable on demand.

19.4 Default, Breach and Re-Entry

In the event that:

- 19.4.1 any moneys (or part of any moneys) payable under this Lease are unpaid for the space of 14 days after any day on which the same ought to have been paid (although no formal or legal demand has been made);
- 19.4.2 the Lessee commits, permits or suffers to occur any breach, or default in the due and punctual observances and performance of any of the covenants, obligations and provisions of the Lease;
- 19.4.3 in the case of a Lessee being a company or association:
- 19.4.3.1 a meeting of the directors or members of the Lessee is convened to pass a resolution that an administrator of the Lessee be appointed or that the Lessee be wound up voluntarily;
 - 19.4.3.2 any person appoints an administrator of the Lessee;
 - 19.4.3.3 an application is made to any court to wind up the Lessee;
 - 19.4.3.4 an application is made pursuant to Section 411 of the *Corporations Act 2001*;
 - 19.4.3.5 a Controller, Managing Controller, Receiver or Receiver and Manager is appointed to the Lessee or in respect of any property of the Lessee; or
 - 19.4.3.6 the Lessee is deregistered or dissolved;
- 19.4.4 in the case of a Lessee being a natural person:
- 19.4.4.1 the Lessee commits an act of bankruptcy or a sequestration order is made against the Lessee;
 - 19.4.4.2 a creditor of the Lessee presents a creditor's petition against the Lessee under the *Bankruptcy Act 1966*;
 - 19.4.4.3 the Lessee presents a petition against himself or herself under the *Bankruptcy Act 1966*;
 - 19.4.4.4 the Lessee signs an authority under Section 188 of the *Bankruptcy Act 1966*;
 - 19.4.4.5 the Lessee gives a debt agreement proposal to the Official Trustee under Part IX of the *Bankruptcy Act 1966*, and that debt agreement proposal is accepted by the Lessee's creditors;

- 19.4.4.6 the Lessee becomes subject to an order directing the Official Trustee or a specified registered Trustee to take control of his or her property before sequestration; or
- 19.4.4.7 the Lessee is convicted of an indictable offence (other than a traffic offence);
- 19.4.5 execution is levied against the Lessee and not discharged within 30 days;
- 19.4.6 any property in or on the Premises is seized or taken in execution under any judgment or proceedings;
- 19.4.7 the Premises are left unoccupied for 1 month or more without the Council's consent;

then despite any other clause of this Lease the Council at any time has the right to re-enter into and upon the Premises in the name of the whole and to have again repossess and enjoy the same as of its former estate but without prejudice to any action or other remedy which the Council has or might or otherwise could have for arrears of Rent or any other amounts or breach of covenant or for damages as a result of any such event and the Council shall be freed and discharged from any action, suit, claim or demand by or obligation to the Lessee under or by virtue of the Lease.

19.5 **Rights of Council not Limited**

The rights of the Council under this Lease and at law resulting from a breach of this Lease by the Lessee shall not be excluded or limited in any way by reason of the Council having or exercising any powers under this clause 19.

19.6 **Landlord and Tenant Act**

In the case of a breach or default of any term of this Lease where notice is required to be given pursuant to Section 10 of the *Landlord and Tenant Act* 1936, such notices will provide that the period of 14 days is the period within which the Lessee is to remedy any such breach or default if it is capable of remedy or to make reasonable compensation in money to the satisfaction of the Council. No period of notices is required for the non-payment of Rent.

19.7 **Repudiation and Damages**

- 19.7.1 The Lessee acknowledges that the following obligations under this Lease are essential terms:
 - 19.7.1.1 the obligation to pay rent;
 - 19.7.1.2 the obligation to contribute to the sinking fund provided for in clause 7;
 - 19.7.1.3 the obligation to pay Outgoings;
 - 19.7.1.4 the obligations and prohibitions in relation to use of the Premises;

19.7.1.5 the obligations and restrictions in relation to additions and alterations to the Premises; and

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

19.7.2 If the Council accepts payment of rent or any other moneys late or does not act or exercise any rights immediately or at all in respect of any breach of an essential term, that conduct on the part of the Council will not be deemed to amount to a waiver of the essential nature of that essential term.

19.7.3 If the Lessee breaches any essential term, that conduct on the part of the Lessee will be deemed to constitute a repudiation of this Lease and the Council may at any time thereafter rescind this Lease by accepting that repudiation.

19.7.4 The Lessee agrees that if this Lease is terminated by the Council because of a breach by the Lessee of an essential term, or if the Lessee repudiates this Lease and the Council accepts that repudiation thereby rescinding this Lease, the Lessee will be obliged to pay compensation to the Council including rent and other moneys which the Council would otherwise have received under this Lease for the balance of the Term had the Lessee not breached an essential term or repudiated this Lease. In those circumstances the Council will be obliged to take reasonable steps to mitigate its losses and to endeavour to lease the Premises at a reasonable rent and on reasonable terms.

19.7.5 The rights of the Council under this clause 19.7 and any action taken by the Council hereunder do not exclude or limit any other rights or entitlements which the Council has under this Lease or at law in respect of any breach or repudiatory conduct on the part of the Lessee.

19.8 **Interest on Overdue Amounts**

If the Lessee does not pay an amount when it is due, it must pay interest on that 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.

20. **INDEMNITY AND RELEASE**

20.1 **Risk**

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

20.2 **Indemnity**

The Lessee is liable for and indemnifies the Council 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:

20.2.1 any act or omission of the Lessee;

- 20.2.2 the overflow or leakage of water or any other harmful agent into or from the Premises;
- 20.2.3 any fire on or from the Premises;
- 20.2.4 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;
- 20.2.5 a breach of this Lease by the Lessee; or
- 20.2.6 the Lessee's use or occupation of the Premises.

20.3 **Release**

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

20.4 **Indemnities are independent**

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

21. **GOODS AND SERVICES TAX**

- 21.1 If a GST applies to impose tax on the Agreed Consideration or any part of it or if the Council is liable to pay GST in connection with this Lease or any goods, services or other things supplied under this Lease then:
 - 21.1.1 the Agreed Consideration for that supply is exclusive of GST;
 - 21.1.2 the Council may increase the Agreed Consideration or the relevant part of the Agreed Consideration by a percentage amount which is equal to the GST Rate; and
 - 21.1.3 the Lessee shall pay the increased Agreed Consideration on the due date for payment by the Lessee of the Agreed Consideration.
- 21.2 Where the Agreed Consideration is to be increased to account for GST under this clause 21, the Council shall, on or before the date on which the Agreed Consideration is payable, issue a tax invoice to the Lessee.
- 21.3 If the Lessee does not comply with its obligations under the Lease or with its obligations under GST Legislation in connection with the Lease and as a result the Council becomes liable for penalties or interest for late payment of GST, then the Lessee must pay the Council on demand an amount equal to the amount of the penalties and interest.

22. **BANK GUARANTEE**

- 22.1 If and whenever requested to do so by the Council, the Lessee must arrange for the immediate issue of the Bank Guarantee.
- 22.2 If the amount of the Bank Guarantee is calculated by reference to monthly instalments of Rent then the Lessee must, if required by the Council,

immediately following any review or adjustment of the Rent, provide a replacement Bank Guarantee in an amount equal to the total of the monthly amounts payable during the specified period (and where appropriate, reasonably estimated by the Council).

- 22.3 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 as provided in clause 19, the Council 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 Council as a consequence of the default.
- 22.4 The Council will be entitled to claim and the bank will make payment under the Bank Guarantee without reference to the Lessee and notwithstanding any objection, claim or direction by the Lessee to the contrary.
- 22.5 Upon each occasion when the Council has recourse to the Bank Guarantee, the Council will be entitled, by notice in writing to the Lessee, to 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 Council (**Deficiency**). Within 7 days of receipt by the Lessee of each notice, the Lessee must:
- 22.5.1 provide evidence to the Council of the reinstatement of the existing Bank Guarantee to its full amount prior to the occurrence of the Deficiency; or
- 22.5.2 provide to the Council an additional bank guarantee equal to the amount of the Deficiency and the terms of this clause 22 shall apply mutatis mutandis in relation to that additional bank guarantee.
- 22.6 The rights of the Council under this clause 22 shall not derogate from the other rights and remedies available to the Council under this Lease or at law or in equity in relation to any default of the Lessee.
- 22.7 Upon the expiration of the Term and the vacation of the Premises by the Lessee in accordance with the terms of this Lease, provided the Lessee is not then in default, the Council must release the Bank Guarantee to the Lessee.
- 22.8 If the benefit of the Lease is transferred or assigned by the Council to any person, the benefit of the Bank Guarantee extends to and is to be taken to be assigned to the transferee or assignee. The Lessee must do all things necessary to give effect to that assignment including without limitation, providing a replacement Bank Guarantee in favour of the transferee or assignee if requested to do so by the Lessor.
- 22.9 The Council is entitled to recover from the Lessee the Rent and all other moneys due and owing under this Lease and damages arising out of the Lessee's breach or breaches without being limited to the amount of the Bank Guarantee.

23. GENERAL

23.1 Costs

The Lessee must, on request, pay or reimburse to the Council:

- 23.1.1 all stamp duty (if any) payable on this Lease;
- 23.1.2 if the Act does not apply to this Lease (unless otherwise agreed between the parties) all of the legal costs (determined on a solicitor and client basis) incurred by the Council in connection with the preparation of this Lease, negotiating, revising and engrossing this Lease (including all attendances on the Lessee and its legal and other advisers and all advices provided to the Council) and attending to the execution of this Lease;
- 23.1.3 if the Act does apply to this Lease, one half of all other preparatory costs incurred by the Council. For the purposes of this sub-clause, "preparatory costs" has the meaning described in the Act, namely, legal and other expenses incurred by the Council in connection with the preparation, negotiation, stamping and registration of this Lease including the costs of attendances on the Lessee by the Council, or a solicitor acting for the Council;
- 23.1.4 all of the legal costs incurred by the Council in connection with the preparation, negotiation, revision, execution and registration of any extension of this Lease; and
- 23.1.5 all legal and other costs and expenses incurred by the Council in consequence of any actual or threatened breach by the Lessee hereunder or in exercising or enforcing (or attempting to do so) any rights or remedies of the Council hereunder or at law or otherwise arising in consequence of any actual or threatened breach by the Lessee.

23.2 Waiver

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

23.3 Notice

Without excluding any other form of service, any notice required to be given or served will be sufficiently given or served as follows:

- 23.3.1 in the case of the Lessee, if left at the Premises, or if the Lessee has vacated the Premises, then if posted by pre-paid post to the last known address of the Lessee;
- 23.3.2 in the case of the Council, if posted by pre-paid post to the Manager (if the Council has appointed one) at the Manager's principal place of business in South Australia or to the Council 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 Council's principal place of business at the relevant time).

Notice served by pre-paid post will be deemed to have been given or served 3 Business Days after posting.

23.4 **Severance**

If any part of this Lease is found to be invalid or void or unenforceable, then that part will be severed from this Lease and the remainder of this Lease will continue to apply.

23.5 **Entire Agreement**

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

23.6 **Resumption**

If the Council receives notice of resumption or acquisition of the Premises or the Land (or any part of the Land affecting the Premises) from or by any Statutory Authority or any governmental or semi-governmental body, then the Council may terminate this Lease by giving not less than 3 months' written notice to the Lessee. When such termination takes effect, the rights and obligations of the Council and the Lessee hereunder will come to an end but if any breach by either party still exists at that time then the rights of the other party with regard to that existing breach will continue.

EXECUTED as an AGREEMENT:

Signed for the City of Burnside by its authorised delegate in the presence of:

..... Signature of witness Signature of authorised delegate
..... Name of witness (print) Name of authorised delegate (print)
 Position of authorised delegate

OR

THE COMMON SEAL of The City of Burnside was hereunto affixed in the presence of:)
)
)
)

.....
Mayor

.....
CEO

Signed for the [LESSEE] by its authorised delegate in the presence of:

..... Signature of witness Signature of authorised delegate
..... Name of witness (print) Name of authorised delegate (print)
 Position of authorised delegate

OR

THE COMMON SEAL of [LESSEE] was hereunto affixed in accordance with its Constitution and in the presence of:)
)
)
)

.....
Seal Holder

.....
Seal Holder

FIRST SCHEDULE

<p>ITEM 1 Premises</p>	<p>The portion of the land comprised in Certificate of Title Volume # Folio # being the area marked # in the plan attached as Annexure A</p>									
<p>ITEM 2 Land</p>	<p>The whole of the land comprised in Certificate of Title Volume # Folio #</p>									
<p>ITEM 3 Initial Term</p>	<p># years commencing on # (Commencement Date) and expiring at midnight on #</p>									
<p>ITEM 4 Renewal(s)</p>	<p>#</p>									
<p>ITEM 5 Rent</p>	<p># (\$#) per annum (exclusive of GST) (subject to review pursuant to clause 6)</p>									
<p>ITEM 6 Rent Review Dates and Review Method</p>	<table border="0"> <thead> <tr> <th></th> <th style="text-align: center;">Review Dates</th> <th style="text-align: center;">Review Method</th> </tr> </thead> <tbody> <tr> <td>(a)</td> <td>Date: # Year(s): #</td> <td style="text-align: center;">#</td> </tr> <tr> <td>(b)</td> <td>Date: # Year(s): #</td> <td style="text-align: center;">#</td> </tr> </tbody> </table>		Review Dates	Review Method	(a)	Date: # Year(s): #	#	(b)	Date: # Year(s): #	#
	Review Dates	Review Method								
(a)	Date: # Year(s): #	#								
(b)	Date: # Year(s): #	#								
<p>ITEM 7 Outgoings</p>	<p>Outgoings means the total of all amounts paid or payable by the Council in connection with the ownership, management, administration and operation of the Land and/or Building including:</p> <ul style="list-style-type: none"> • the cost of insuring the Building including all improvements and Building Services; • the amount of any excess or deductible not paid or excluded under any insurance policy taken out by the Council; • all costs (inclusive of wages and other usual employment on-costs) of the management, control and administration of the Land or Building; • all costs of the Council in connection with the operation, supply, maintenance, repair, replacement and renovation of Building Services and all other facilities within the Common 									

	<p>Areas or elsewhere in the Building that are provided from time to time;</p> <ul style="list-style-type: none"> • all costs of the Council in connection with the maintenance, repair, replacement and renovation of the Building from time to time; • all costs of the Council in connection with cleaning, lighting, heating and air-conditioning the Premises and Common Areas and with providing supplies and consumables for toilets, washrooms and other facilities provided to the Premises and in the Common Areas; • all costs of the Council in connection with the maintenance, repair, replacement and renovation of car parking areas, pedestrian areas and landscaped areas within and around the Building; • all costs of the Council in relation to establishing, maintaining, repairing and replacing common signs, notices and directory boards within the Building; • all costs of the Council in connection with providing security in and for and around the Building (including equipment, systems and security and other personnel); and • contributions to any sinking fund established under clause 7.
ITEM 8 Permitted Use	<i>[# insert adequate description]</i>
ITEM 9 Public Risk Insurance	\$20,000,000.00
ITEM 10 Refurbishment	#
ITEM 11 Bank Guarantee	#
ITEM 12 Sinking Fund	#

SECOND SCHEDULE
Special Conditions

The terms and conditions (if any) set out in the Second Schedule are deemed to be incorporated into this Lease and, in the event of any inconsistency with the terms and conditions contained in this body of this Lease, then these special conditions will prevail.

Annexure A Plan

Annexure B Maintenance Schedule

ADDENDUM : MAINTENANCE SCHEDULE

Item	Lessee's Obligations	Council's Obligations
Rent	See Lease Schedule	Nil
Capital Works	Lessee to maintain Lessee may initiate at its cost provided approval is granted from Council including any necessary building and planning approvals	Nil
Council rates, taxes, emergency services levy and charges	Lessee responsibility	Nil
Utilities including telephone, electricity, gas, water and excess water	Lessee responsibility	Nil
Preparation costs of standard lease	Nil	Council
Insurance		
Building insurance excess (if insured through Council)	Lessee responsible for first \$1000 in respect to each claim	Nil
Building insurance premium	Lessee to arrange and provide evidence to Council or request Council to arrange and reimburse Council.	Nil
Contents insurance	Lessee's responsibility	Nil
Public liability insurance	Lessee's responsibility	Nil
Glass	Lessee to replace and insure all <i>plate glass</i> on the interior and exterior of the Premises	Nil
Inside Buildings / Structures		
Cleaning of the Premises	Lessee to undertake all cleaning of the Premises	Nil
Pest Control	Lessee to use its best endeavours to avoid attracting pests to the Premises Lessee to maintain and provide copies of inspection reports	Nil
Air-conditioners	Lessee to purchase, insure, service and pay the running cost	Nil
Plumbing Maintenance	Lessee to maintain	Nil internal
Maintenance of electrical power points, RCD's and fixed cables along with the annual testing	All maintenance to be lessee's responsibility Lessee to maintain annual testing and tagging and provide copies of inspection reports	Nil
Maintenance of stoves & other electrical items	Lessee to maintain	Nil
Maintain lighting, fixtures and fittings	Lessee to maintain	Nil
Maintenance of fire safety equipment (eg extinguishers, exit lights)	Lessee to maintain and provide copies of inspection reports	Nil
Floor Coverings	The lessee is required to maintain floor coverings in an adequate condition at all times – to be at the same or better condition at the expiration of the lease as at the beginning of the lease.	Nil
Building Inspection	Building Inspection required at least every five years – Council to arrange and lessee to reimburse Council	Nil financial; scheduling of inspection
Paint	The lessee is required to maintain painting (inside & outside) in an adequate condition at all times – to be at the same condition at expiration of the lease as at	Nil

	the beginning of the lease	
Cleaning of Roofs, gutters and downpipes	Lessee to maintain	Nil
Inside Buildings / Structures (continued)		
Hot water service	Lessee to maintain	Nil
Maintenance of locks	Lessee to maintain and provide two keys to Council	Nil
Doors on the interior and exterior of the Premises	Lessee to maintain and replace when reasonably required	Nil
Building maintenance (Includes foundation, salt damp course, window frames, exterior walls, verandah posts, roof structure, gutters, exterior steps, stairs, guard/hand rails, ramps, ceilings and interior)	Lessee to maintain and report issues	Council to repair structural faults where it is not a result of negligent maintenance by the lessee.
Maintenance of water storage tanks	Lessee to maintain	Nil
Maintenance of roller doors	Lessee to maintain	Nil
Graffiti	Lessee required to remove within 14 days	Nil
Grounds		
Trees and vegetation	Lessee to maintain	Nil
Grounds Linemarking	Lessee to maintain	Nil
Mowing	Lessee to maintain	Nil
Aerating	Lessee to maintain	Nil
Fertilising	Lessee to maintain	Nil
Topdressing	Lessee to maintain	Nil
Weedspraying	Lessee to maintain	Nil
Irrigation system maintenance	Lessee to advise Council of issues	Council
Irrigation management	Lessee to maintain	Nil
Black beetle spraying	Lessee to maintain	Nil
Other Areas		
Carpark	Lessee to maintain	Nil
Boundary fence and Gates	Lessee to maintain	Nil
Internal Fences and Gates	Lessee to maintain	Nil
Underground mains water and sewerage pipes to the lease boundary	Lessee to maintain except where trees or other circumstances beyond the lessee's control impede the pipework on unleased portion of land.	Council to repair pipework travelling through unleased land except where lessee negligent