

LEASE AGREEMENT

262B STURT ROAD MARION SA 5043

The Corporation of the City of Marion

Marion Sports and Community Club Incorporated

**Norman
Waterhouse**
LAWYERS

Level 15, 45 Pirie Street
Adelaide SA 5000
Telephone + 61 8 8210 1200
Fax + 61 8 8210 1234
www.normans.com.au

DATE

PARTIES

THE CORPORATION OF THE CITY OF MARION of 245 Sturt Road, Sturt SA 5047
(Council)

MARION SPORTS AND COMMUNITY CLUB INCORPORATED of 262 Sturt Road, Marion
SA 5043 (Lessee)

BACKGROUND

- A. The Council is the registered proprietor, 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 agreed to grant the Lessee a lease of the Premises
- D. The Council and Lessee wish to record the terms of their agreement.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this lease:

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

Actuaries Institute means the Actuaries Institute being the peak body for Actuaries in Australia.

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 22).

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.

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; or
- their invitees and customers; or
- any other person who the Council authorises including use by the public;

and including driveways, car parks and walkways.

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 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 4.3.

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 Council's Improvements and Equipment or 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 Council or any adjoining owner or occupier;
- (e) taking into account any improvements or fixtures erected or installed at the Lessee's expense, unless the Council has required in writing the Lessee to remove any improvements or fixtures at the end of the 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 Council has not required the Lessee in writing to remove at the end of the lease;
- (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, subsidy 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.

Gaming Machine means a gaming machine as defined by the *Gaming Machines Act 1992 (SA)*.

Gaming Machine Entitlement means an entitlement as defined by the *Gaming Machines Act 1992 (SA)* to operate one (1) Gaming Machine.

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 ancillary or similar legislation.

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

Improvements means the interior and exterior of all present and future improvements in or on the Premises and includes all Services and all other conveniences, amenities and appurtenances of in or to the Improvements.

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.

Land means the land described in Item 1 of Schedule 1 and includes any part of the Land.

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

Liquor Act means the *Liquor Licensing Act 1997 (SA)*.

Liquor Licence Applications Policy means Council's policy which provides a framework for the exercise of the Council's powers pursuant to the Liquor Act as amended from time to time.

Maintenance Fee means the fee described in Item 5 of Schedule 1 reviewed annually in accordance with the terms of this lease.

Market Review means a review of Rent to Current Market Rent as set out in clause 4.5.

Outgoings means the outgoings (if any) described in Item 6 of Schedule 1.

Payment Date means the Commencement Date and each anniversary of the Commencement Date during the Term unless otherwise agreed between the parties.

Permitted Use means the use described in Item 7 of Schedule 1.

Premises means the premises described in Item 1 of Schedule 1 and where the context permits includes any part of the Premises.

Rates and Taxes means all present and future rates, charges, levies, assessments, duty and charges of any Statutory Authority (but in this definition excluding Council in its separate capacity as a relevant 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 Land or Premises and includes water and sewer charges, emergency services levy and, subject to the Act, land tax (on a single holding basis).

Rent means the rent described in Item 3 of Schedule 1.

Rent Subsidy Criteria means the list of considerations to be assessed by the Council in granting a rent subsidy under this lease as listed in Schedule 2.

Rent Subsidy Percentage means the percentage reduction to be applied to the Rent granted to the Lessee for compliance with the Rent Subsidy Criteria as listed in Schedule 2.

Rent Subsidy Criteria Questionnaire means the questionnaire provided to the Lessee which contains questions and requires the provision of information relevant to the Lessee satisfying the Council that it has satisfied each of the Rent Subsidy Criteria.

Review Date means each date during all years of the Term as 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.

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

Statutory Authorities means any government or authorities created by or under any relevant Legislation (including the Council in its separate capacity as local government authority).

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 and any period during which the Lessee holds over or remains in occupation of the Premises.

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

- (a) who is appointed by the Council;

- (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 Schedule 3 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; and
- 1.3.2 any right, power or remedy of the Council 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 Council grants and the Lessee accepts a lease of the Premises for the Term as set out in this lease.

3. **RENT**

3.1 **Payment of Rent**

The Lessee must pay the Rent annually in advance and in any event by each Payment Date.

3.2 **Rent payment periods**

If a rent payment period is less than one year, then the payment for that period is calculated at a daily rate based on the number of days in the year in which that period begins and the yearly payment which would have been payable for a full year.

3.3 **Rent Subsidy**

- 3.3.1 The parties acknowledge that the Lessee will be entitled to a percentage discount to be applied to the Rent equivalent to the Rent Subsidy Percentage for each Rent Subsidy Criteria which the Council determines the Lessee has complied with as set out in Schedule 2.
- 3.3.2 Prior to 30 November in each year of the Term the Lessee must complete and return a completed Rent Subsidy Criteria Questionnaire with copies of documentation supporting the Lessee's responses to the Rent Subsidy Criteria Questionnaire to Council.
- 3.3.3 The Lessee's failure to provide a completed Rent Subsidy Criteria Questionnaire to the Council by 30 November in each year of the Term will constitute a failure by the Lessee to evidence compliance with the Rent Subsidy Criteria in Schedule 2.
- 3.3.4 If applicable, after the Rent has been reviewed in accordance with this lease (including a review to Current Market Rent in accordance a Market Review), a rental discount equivalent to the Rent Subsidy

Percentage for each Rent Subsidy Criteria will be applied to the reviewed Rent.

- 3.3.5 A failure by the Lessee to comply with any Rent Subsidy Criteria in relation to which a discount has been applied during the Term will be a breach of an essential term of the lease.

4. RENT REVIEWS

4.1 Rent to be reviewed

The Rent will be reviewed on each Review Date during the Term by the relevant Review Method for the Review Date in accordance with clause 4.

4.2 CPI review

4.2.1 In this clause:

4.2.1.1 **Current CPI** means for a CPI Review Date, the CPI number for the quarter ending immediately before that Review Date; and

4.2.1.2 **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).

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

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

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, subsidies or reductions).

4.3 Change to CPI

If the CPI is no longer published, either party may ask the President of the Actuaries 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 Council must pay all of the President's costs for nominating an index.

4.4 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.

4.5 Current Market Rent

- 4.5.1 The Council will appoint the Valuer to assess the Current Market Rent for the Premises (**Council's Rent Assessment**).

- 4.5.2 The Council may at any time give the Lessee written notice stating the Council's Rent Assessment.
- 4.5.3 The Rent from and including the relevant Review Date is the amount stated in the Council's notice under clause 4.5.1 unless the Lessee gives the Council written notice disagreeing with that amount (**Objection**) within 14 days after the Council's notice.
- 4.5.4 If the Lessee gives the Council an Objection, then the Rent must be determined by a Valuer.
- 4.5.5 The Valuer must determine the Current Market Rent under this clause.
- 4.5.6 The Council and the Lessee may make written submissions to the Valuer within 14 days after the Valuer is appointed.
- 4.5.7 Each party must forward to the other a copy of all written material provided to the Valuer when it is provided to the Valuer.
- 4.5.8 Within 14 days after receiving those written materials, a party may give written comments to the Valuer on the other party's written submissions.
- 4.5.9 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.
- 4.5.10 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.

4.6 **Rent pending determination**

- 4.6.1 The Rent may be reviewed within 6 months from a Review Date even if the review is instituted after that Review Date.
- 4.6.2 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.

4.7 **Adjustments**

Once the Rent and Rent Subsidy Percentage to apply on and from a Review Date is agreed or determined (as the case may be), the Lessee must pay any shortfall and the Council must allow any adjustment for overpayment at the next Payment Date.

4.8 **Other review**

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

5. RATES AND TAXES AND OUTGOINGS

5.1 Liability for Rates and Taxes

- 5.1.1 The Lessee shall be required to pay or reimburse the Council any Rates and Taxes levied, assessed or charged in respect of the Premises or upon the owner or occupier of the Premises.
- 5.1.2 For the avoidance of doubt, the Rates and Taxes do not include Council rates.

5.2 Lessee's Share

If any Rates and Taxes 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 assessed or charged in respect of the Land.

5.3 Power and other utilities

- 5.3.1 The Lessee must pay, when due, 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.
- 5.3.2 If there is no separate meter for a service or utility used on or from the Premises and if the Council so requires, then the Council will install the meter at its own cost.
- 5.3.3 The Lessee shall be responsible for all electrical tagging and testing as required of the Lessee's Equipment at the Premises.
- 5.3.4 Without limiting this subclause, the Lessee must comply with the *Electricity (General) Regulations 2012 (SA)* and any other applicable electricity laws.

5.4 Separate air-conditioning plant

- 5.4.1 If the Premises are served by separate air-conditioning plant or equipment the Lessee must, at its own cost, ensure that the air-conditioning plant or equipment is properly and regularly serviced and maintained. If the Council gives any instructions or directions with regard to the service and maintenance of that air-conditioning plant or equipment, the Lessee must, at its own cost, ensure that the air-conditioning plant and equipment is serviced and maintained in accordance with those instructions or directions.
- 5.4.2 If the Council chooses to arrange for the service, maintenance and repair of the air-conditioning plant or equipment (and notifies the Lessee accordingly) then the Lessee must permit the Council, and any person authorised by it for that purpose, to enter the Premises and carry out such service, maintenance and repair at all reasonable times. The Lessee must pay or reimburse to the Council all costs incurred in that regard which the Council may recover from the Lessee as a debt due and payable on demand.

- 5.4.3 The Lessee must pay or reimburse to the Council the cost of all power consumed by such air-conditioning plant or equipment and the Council may recover any such amounts as a debt due.

6. WATER

6.1 Mains water

Subject to Special Condition 3, the Lessee must pay when due, all costs and outgoings in relation to water usage and water rates of all mains located on the Premises.

6.2 Water efficiency

The Lessee must use its best endeavours to ensure that, at all times, water is used and consumed at the Premises in an efficient and responsible manner.

6.3 Recycled water and bore water access

Subject to Special Condition 3, Lessee shall be responsible for all costs and outgoings in relation to water usage and rates associated with the use of bore water or recycled water on the Premises and the Council may enter into a separate agreement with the Lessee regarding the costs of bore water and recycled water.

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 Council's consent.

7.2 Offensive activities

The Lessee must:

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

7.3 Use of facilities

- 7.3.1 The Lessee must ensure that the Services are used carefully and responsibly and in accordance with any directions given by the Council from time to time.
- 7.3.2 The Lessee must repair or correct any damage or malfunction which results from any misuse or abuse of the Services by the Lessee.

7.4 Statutory Requirements

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

- 7.4.1 the Lessee's use and occupation of the Premises;
- 7.4.2 the Permitted Use.

7.5 Signs

- 7.5.1 The Lessee must not place any sign or advertisement on the outside or inside (if they can be seen from outside) of the Premises, except a sign or advertisement which:
 - 7.5.1.1 is approved by the Council; and
 - 7.5.1.2 complies with any relevant Statutory Requirements.
- 7.5.2 Council reserves the right to require the Lessee to place any sign or advertisement on the outside or inside of the Premises in accordance with Council's policy at the time.
- 7.5.3 The Lessee is prohibited from placing any political sign or advertisement on the outside or the inside of the Premises.

7.6 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 must not install or bring onto the Premises:

- 7.6.1 any electrical, gas powered or other machinery or equipment that may pose a danger, risk or hazard;
- 7.6.2 any chemicals or other dangerous substances that may pose a danger, risk or hazard; or
- 7.6.3 any heavy equipment or items that may damage the Premises or Improvements.

7.7 Fire precautions

The Lessee must 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 consequence of the Lessee's use of the Premises or the Lessee's negligence or default.

7.8 Security

The Lessee must keep all buildings on the Premises securely locked at all times when they are not occupied and must provide keys to the buildings on the Premises to the Council (or if the Council has engaged a manager, then to the manager) to be used only in emergencies.

7.9 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.

8. LIQUOR LICENCE

8.1 Service of Alcohol

The Lessee must not:

8.1.1 serve, sell or provide to persons; or

8.1.2 consume or allow persons to consume;

alcoholic beverages on the Premises except in accordance with a Liquor Licence obtained pursuant to clause 8.2 and otherwise in accordance with this clause.

8.2 Obtaining Liquor Licence

8.2.1 The Lessee is responsible for and will take all steps necessary in order to obtain all necessary licences (**Liquor Licence**) under the Liquor Act.

8.2.2 In addition to the requirements of clause 8.2.1, the Lessee must take all steps necessary in order to comply with Council's Liquor Licence Applications Policy.

8.2.3 In addition to the requirements of clause 8.2.1, the Lessee must obtain all other approvals, licences, consents and renewals as may be necessary to serve or sell alcoholic beverages on the Premises.

8.2.4 The Lessee must obtain the Council's consent which may be withheld at the Council's discretion prior to seeking to obtain a Liquor Licence for the Premises and prior to agreeing to any conditions of the Liquor Licence.

8.3 Maintenance of Liquor Licence

8.3.1 The Lessee must not do anything or allow anything to be done that would result in the Liquor Licence or any other licence, approval or consent issued under the Liquor Act relating to the Premises or any business conducted from the Premises:

8.3.1.1 not being renewed or being suspended or forfeited or removed from the Premises;

8.3.1.2 which results in more onerous conditions being imposed on or in respect of such Liquor Licence;

8.3.1.3 which has or may have any prejudicial effect on any such Liquor Licence; or

8.3.1.4 which may constitute or result in the commission of any offence under the Liquor Act.

- 8.3.2 Without limiting clause 8.3.1, the Lessee must not without the Council's prior written consent apply under the Liquor Act or to any other Statutory Authority to decrease or restrict the hours of trading permitted under the Liquor Licence or the Liquor Act in respect of the Premises.
- 8.3.3 The Lessee must at its own cost and expense in all things, comply with and observe, and carry out and perform all of the requirements of the Liquor Licence and the Liquor Act and all directions and requirements relating to the Premises and the business conducted on the Premises which may be issued under the Liquor Act or by any person or authority with lawful jurisdiction.
- 8.3.4 Where the Lessee is required pursuant to the terms of the Liquor Licence or under the Liquor Act or in pursuance of any direction or requirement issued under that Act or by any other person or authority with lawful jurisdiction, to carry out works, then such works must be carried out in a good manner which is consistent with that of one skilled in the works carried out, within the timeframe required and to the satisfaction of the person or authority who required the work to be completed.
- 8.3.5 The Lessee must renew the Liquor Licence and keep it current at all times during the Term.
- 8.3.6 On request by the Council, the Lessee must supply the Council with copies of all statutory declarations and other forms, letters, applications and material supplied by the Lessee to the Liquor and Gambling Commissioner and/or any other authorities under the Liquor Act.
- 8.3.7 If the Lessee or any manager, licensee or employee of the Lessee receives or is served with any summons, complaint or other legal process or any notice, requirement or further communication from any person or authority acting under the Liquor Act or otherwise relating to the Liquor Licence, then the Lessee must immediately inform the Council of the same and provide all particulars requested by the Council.

8.4 Transfer of Liquor Licence After Termination

Upon the expiration or sooner termination of this lease, the Lessee will, if so requested by the Council, use its best endeavours to transfer to the Council or its nominee, the Liquor Licence and all other licences, approvals and consents at no cost to the Council or its nominee.

9. GAMING MACHINES ENTITLEMENTS

9.1 No additional gaming machines entitlements

- 9.1.1 The Lessee must not during the Term apply for or acquire any more Gaming Machine Entitlements(which would increase the number of Gaming Machines on the Premises as at the Commencement Date).
- 9.1.2 The Lessee may during the Term retain, operate, upgrade and replace any Gaming Machines.

- 9.1.3 The Lessee must not permit, allow or consent to any sublessee to apply for Gaming Machine Entitlements.

10. INSURANCE

10.1 Lessee must insure

The Lessee must keep current during the Term:

- 10.1.1 public liability insurance for at least the amount in Item 8 of Schedule 1 (or any other amount the Council reasonably requires) for each claim;
- 10.1.2 all insurance in respect of the Lessee's Equipment for its full replacement value; and
- 10.1.3 other insurances required by any Statutory Requirement or which the Council reasonably requires.

10.2 Requirements for policies

Each policy must:

- 10.2.1 be with an insurer and on terms reasonably approved by the Council;
- 10.2.2 in the case of the insurance for public liability be in the name of the Lessee and note the interest of the Council;
- 10.2.3 cover events occurring during the policy's currency regardless of when claims are made; and
- 10.2.4 note that despite any similar policies of the Council, the Lessee's policies will be primary policies.

10.3 Evidence of insurance

The Lessee must give the Council certificates evidencing the currency of each policy. During the Term the Lessee must:

- 10.3.1 pay each premium before it is due for payment;
- 10.3.2 give the Council certificates of currency each year when the policies are renewed and at other times the Council requests;
- 10.3.3 not vary, allow to lapse or cancel any insurance policy without the Council's consent;
- 10.3.4 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;

10.4 Insurance affected

- 10.4.1 The Lessee must not unless otherwise approved by the Council (under this clause or another clause of this lease) do anything which may:
 - 10.4.1.1 prejudice any insurance the Council has in connection with the Premises or the Improvements; or

- 10.4.1.2 create a risk which would increase the premium for any insurance the Council has in connection with the Premises or the Improvements.

10.5 Council's insurance obligations

The Council must keep current during the Term insurance in respect of the Improvements and the Land.

11. REPAIR AND MAINTENANCE

11.1 Precinct Plan

- 11.1.1 The Council and the Lessee have agreed responsibility for certain fit-out, repair, maintenance and other works to be undertaken on the Land and have recorded their agreement in a table attached to the Lease ("**Initial Precinct Plan**") as Annexure C.
- 11.1.2 The Initial Precinct Plan will be reviewed by Council and after consultation with the Lessee updated every four (4) years to identify activation and other opportunities for the Land (including the Premises) ("**New Precinct Plan**").
- 11.1.3 The Lessee must cooperate with Council and comply in the performance of the obligations under the Initial Precinct Plan and any New Precinct Plan (from time to time).
- 11.1.4 Any dispute between the parties in relation to the Precinct Plan is to be dealt with pursuant to 27 of the lease.

11.2 Repair

- 11.2.1 The Lessee must keep and maintain the Premises, the Lessee's Equipment and any Services situated within the Premises and which exclusively service the Premises in good repair and condition.
- 11.2.2 The Lessee is responsible for all the day to day repairs and maintenance at the Premises including the repair and maintenance of:
- 11.2.2.1 all items required to ensure compliance with all Statutory Requirements in relation to emergency and fire and safety procedures including operable hose reels, fire hydrants, fire extinguishers, fire blankets, alarms and emergency and exit lighting;
 - 11.2.2.2 all interior fittings including but not limited to light globes, washers, taps and carpets;
 - 11.2.2.3 signage; and
 - 11.2.2.4 internal paint works.

- 11.2.3 The Lessee is responsible for the removal and disposal of garbage and waste at the Premises including the removal of:
- 11.2.3.1 weeds; and
- 11.2.3.2 rubbish;
- provided that the Council is responsible for the collection of any public bins installed on the Premises.
- 11.2.4 The Lessee is responsible to maintain all grassed areas, ovals and outdoor playing fields on the Premises to a good condition during the Term.
- 11.2.5 The Lessee must promptly repair any damage to the Improvements or the Land caused or contributed to by the act, omission, negligence or default of the Lessee and in any event must repair any such damage to the Improvements or the Land within 14 days of the Lessee being given notice to repair the damage by the Council.
- 11.2.6 Without limiting the general obligations of the Lessee under this clause, the Lessee must ensure that it keeps and maintains the Premises, the Lessee's Equipment and any Services situated within the Premises so as to comply with its obligations under the Council's guidelines for maintenance, repair and building upgrades for Council owned land in Annexure B of this lease.

11.3 **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 Council's approval, when last replaced. Notwithstanding this clause, applications for capital works are to be made by the Lessee in accordance with the relevant Council policy at the time.

11.4 **Alterations by Lessee**

- 11.4.1 The Lessee must not carry out any alterations or additions to the Premises without the Council's consent.
- 11.4.2 The Lessee must provide full details of the proposed alterations and additions to the Council.
- 11.4.3 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.
- 11.4.4 The Lessee must carry out any approved alterations and additions:
- 11.4.4.1 in a proper manner which is consistent with that of one skilled in the works carried out;
- 11.4.4.2 in accordance with the conditions imposed by the Council and with the approvals made by Council in its capacity as lessor under this lease;

11.4.4.3 in accordance with all Statutory Requirements; and

11.4.4.4 in a way to minimise disturbance to others.

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

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

12. CLEANING

The Lessee must:

12.1.1 keep the Premises clean and tidy;

12.1.2 keep the Premises free of vermin, insects and other pests;

12.1.3 promptly remove any graffiti on the inside of any Improvements; and

12.1.4 not cause the Common Areas to be left untidy or in an unclean state or condition.

13. ASSIGNMENT, SUBLETTING AND CHARGING

13.1 Assignment

13.1.1 The Lessee may assign its interest in this lease provided that the Lessee must first obtain the consent in writing of the Council.

13.1.2 Subject to the Act, the Council may withhold consent to an assignment of the lease if:

13.1.2.1 the proposed assignee proposes to change the Permitted Use;

13.1.2.2 the proposed assignee is unable to meet the financial obligations under this lease;

13.1.2.3 the Council reasonably considers that the assignee's business skills are inferior to those of the assignor;

13.1.2.4 the Lessee makes a profit on the assignment of the lease; or

13.1.2.5 the Lessee has not complied with the Council's procedural requirements for obtaining the Council's consent.

13.2 Hiring out Premises

Subject to clauses 13.4 and 13.5, the Lessee may hire out the Premises without the Council's consent provided that hiring the Premises is consistent with the Permitted Use.

13.3 Subletting

- 13.3.1 The Lessee must not sub-lease or license any part of the Premises without the Council's prior written consent.
- 13.3.2 The Council may, in considering whether or not to provide its consent under clause 13.3.1, request copies of the terms and conditions on which the Lessee proposes to grant a right of occupancy to a proposed sub-lessee or licensee.
- 13.3.3 All sub-leases or licences granted under this lease must be on terms and conditions acceptable to the Council.

13.4 Public Access

- 13.4.1 The Lessee acknowledges and agrees that those portions of the Premises that comprise playing fields or other open space are to be made available for use by the public at all times provided that in respect of any area that comprises a playing field (excluding the bowling green) and where the relevant member of the public wishes to secure the use of that area (other than for casual recreational access) to the exclusion of others that person has:
 - 13.4.1.1 previously booked a time with the Lessee for use of that area; and
 - 13.4.1.2 the booking does not substantially interfere with any competitive or previously organised use.

13.5 Sub-lease, licence or hire charges

The Lessee acknowledges and agrees that any amounts paid or rates charged for use of the Premises (or any part of the Premises) by sub-lease, licence or hire must be fair and reasonable having regard to the amounts Council would charge for similar requests to use or occupy an area.

14. LESSEE GOVERNANCE

- 14.1 On or before the Commencement Date the Lessee must provide to the Council a copy of the Lessee's constitution and any other documents that regulate its governance and operations.
- 14.2 The Lessee must during the Term consult with Council before proposing to amend or vary the Lessee's constitution or other documents that regulate its governance and operations in a way which would be inconsistent with the terms of this lease.

15. COUNCIL'S OBLIGATIONS AND RIGHTS

15.1 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.

15.2 **Right to enter**

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

- 15.2.1 to assess the Lessee's compliance with the terms of this lease;
- 15.2.2 to do any repairs or maintenance as deemed necessary by the Council to the Premises or the Improvements or other works which cannot reasonably be done unless the Council enters the Premises;
- 15.2.3 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
- 15.2.4 to show prospective lessees through the Premises.

15.3 **Emergencies**

In an emergency the Council may:

- 15.3.1 close the Premises or Improvements; and
- 15.3.2 prevent the Lessee from entering the Premises or Improvements.

15.4 **Works and restrictions**

15.4.1 Upon giving reasonable notice to the Lessee, the Council may:

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

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

15.5 **Right to rectify**

The 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.

15.6 **Maintenance**

Without limiting the general obligations of the parties under this lease, the Council and the Lessee must have regard to their respective maintenance responsibilities outlined in the guidelines for maintenance, repair and building upgrades for Council owned land contained in Annexure B of this lease.

16. DAMAGE OR DESTRUCTION

16.1 Termination for destruction or damage

- 16.1.1 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 Council must give the Lessee either:
- 16.1.1.1 a notice terminating this lease (on a date at least one month after the Council gives notice); or
 - 16.1.1.2 a notice advising the Lessee that the Council intends to repair the Premises and/or the Improvements so that the Premises are accessible and the Lessee can occupy and use the Premises (**Intention to Repair Notice**).
- 16.1.2 If the Council gives an Intention to Repair Notice but does not carry out the repairs within a reasonable time, the Lessee may give notice to the Council that the Lessee intends to end this lease if the Council 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**).
- 16.1.3 If the Council does not give a notice under this subclause or does not take the action specified in the Intention to Terminate Notice, the Lessee may end this lease by giving the Council not less than one month's notice.

16.2 Reduction or abatement of Rent

- 16.2.1 While the Premises are unfit or inaccessible, the Yearly Amounts are reduced unless:
- 16.2.1.1 the Premises are unfit or inaccessible; or
 - 16.2.1.2 an insurer refuses to pay a claim;
- as a result of a deliberate or negligent act or omission of the Lessee.
- 16.2.2 The level of the reduction (if any) depends on the nature and extent of the damage.
- 16.2.3 If the level of the reduction (if any) cannot be agreed it must be determined by a Valuer.

17. REDEVELOPMENT AND DEMOLITION

If as part of any redevelopment or other project conducted by the Council that includes the Premises (**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 may:

17.1 Redevelopment and Termination

terminate this lease subject to the following provisions:

- 17.1.1 at any time after providing the Lessee with those details, the Council may give the Lessee a written notice of termination of this lease (**Termination Notice**) specifying the date on which this lease is to come to an end being a date not less than twelve months after the Termination Notice is given. Unless terminated earlier by the Lessee under clause 17.1.2, this lease comes to an end at midnight on the day specified in the Termination Notice;
- 17.1.2 at any time after receiving a Termination Notice, the Lessee may terminate this lease by giving not less than seven days' written notice to the Council; and
- 17.1.3 when either party terminates this lease under this clause, the rights and obligations of the Council and the Lessee under this lease (except with regard to an existing breach) come to an end.

17.2 Relocation

Propose that the Lessee, upon reasonable notice, vacate the Premises and to occupy an alternative site owned by the Council subject to the following conditions:

- 17.2.1 the Council may at any time after providing the Lessee with those details, give the Lessee a written notice of termination of this lease (**Relocation Notice**) specifying the date on which the Lessee must relocate being a date not less than six months after the Relocation Notice is given;
- 17.2.2 where the Lessee agrees to be relocated, the Lessee must relocate to the alternative site on the date stipulated in the Relocation Notice and must give to the Council all assistance and cooperation necessary to give effect to this clause and to the relocation including the execution of any documents or instruments which the Council reasonably requires;
- 17.2.3 the alternative site must, in the reasonable opinion of the Council, be of comparable quality and utility to the Premises;
- 17.2.4 any reasonable costs incurred in relocating the Lessee must be borne by the Council; and
- 17.2.5 the Lessee's occupation of the alternative site is on the terms in this lease (changed as necessary); or
- 17.2.6 if the Lessee does not agree to be relocated, the Lessee may terminate the lease.

17.3 Conditions

The Council may only exercise its rights under this clause if it has provided the Lessee with details of the proposed Redevelopment sufficient to indicate a genuine proposal to carry out that Redevelopment within a reasonably practicable time after this lease is to be terminated.

18. RIGHTS AND OBLIGATIONS ON EXPIRY

18.1 Expiry

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

18.2 Handover of possession

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

- 18.2.1 if required by Council, remove all of the Lessee's Equipment and repair any damage caused by such removal;
- 18.2.2 if required by Council, remove and reinstate any alterations or additions made to the Premises by the Lessee; and
- 18.2.3 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 may deal with and dispose of those goods in accordance with 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 under a monthly tenancy 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. BREAK CLAUSE

- 19.1 The Lessee may terminate this lease by giving at least three (3) months prior written notice to the Council of its intention to terminate the lease.
- 19.2 If the Lessee terminates this lease pursuant to this clause, the rights and obligations of Council and the Lessee under this lease (except with regard to an existing breach) come to an end on and from, but not before, the date termination of this lease takes effect pursuant to clause 19.1.
- 19.3 For the avoidance of doubt the provisions of clause 18 apply to a termination of the lease under this clause.

20. BREACH

20.1 Payment obligations

- 20.1.1 The Lessee must make payments due under this lease:
 - 20.1.1.1 without demand (unless otherwise provided);

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

20.1.1.3 to the Council or as the Council directs; and

20.1.1.4 by means directed by the Council.

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

20.2 **Set off**

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

20.3 **Council's rights on breach**

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

20.3.1.1 in an emergency; or

20.3.1.2 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.

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

20.4 **Breach and re-entry**

Subject to clause 27, if:

20.4.1 the Lessee fails to pay a sum of money when due and fails to remedy that failure within seven days after receiving notice requiring it to do so;

20.4.2 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;

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

20.4.4 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;

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

20.4.6 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;

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

- 20.4.8 the Lessee is a natural person and commits an act of bankruptcy;
- 20.4.9 the Lessee is convicted of an indictable offence (other than a traffic offence);
- 20.4.10 execution is levied against the Lessee and not discharged within 14 days; or
- 20.4.11 the Premises are unoccupied for one month or more without the Council's consent;

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

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

20.5 Rights of Council not limited

A power or right of the Council 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 Council's powers or rights.

20.6 Repudiation and damages

- 20.6.1 The following provisions are essential terms of this lease:
 - 20.6.1.1 the obligation to pay Rent;
 - 20.6.1.2 the obligation to comply with the Rent Subsidy Criteria;
 - 20.6.1.3 the obligation to pay Rates and Taxes;
 - 20.6.1.4 the provisions about use of the Premises;
 - 20.6.1.5 the provisions about the repair and maintenance of the Premises;
 - 20.6.1.6 the provisions about additions and alterations to the Premises; and
 - 20.6.1.7 the obligations set out in clause 13.
- 20.6.2 The Council 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.
- 20.6.3 Any breach of an essential term by the Lessee is a repudiation of this lease. The Council may at any time accept that repudiation, rescinding this lease.
- 20.6.4 If:
 - 20.6.4.1 the Council terminates this lease because of a breach of an essential term by the Lessee; or

20.6.4.2 the Lessee repudiates this lease and the Council accepts that repudiation, rescinding this lease;

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

20.7 Interest on overdue amounts

The Lessee must pay to the Council 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.

20.8 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 Council. No period of notice is required in respect of non-payment of Rent.

21. INDEMNITY AND RELEASE

21.1 Risk

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

21.2 Indemnity

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

- 21.2.1 any act or omission of the Lessee;
- 21.2.2 the overflow or leakage of water or any other harmful agent into or from the Premises;
- 21.2.3 any fire on or from the Premises;
- 21.2.4 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;
- 21.2.5 a breach of this lease by the Lessee; or
- 21.2.6 the Lessee's use or occupation of the Premises.

21.3 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 Improvements except to the extent that they are caused by the Council's negligence.

21.4 Indemnities are independent

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

22. GOODS AND SERVICES TAX

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

- 22.1.1 the Agreed Consideration for that supply is exclusive of GST;
- 22.1.2 the Council may increase the Agreed Consideration or the relevant part of the Agreed Consideration by the GST Rate; and
- 22.1.3 the Lessee must pay the increased Agreed Consideration on the due date for payment by the Lessee of the Agreed Consideration.

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

22.3 If the Lessee breaches this clause 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 penalties and interest.

23. RESUMPTION

23.1 The Council may terminate this lease by giving at least three (3) months' written notice to the Lessee if the Council receives notice of resumption or acquisition of the Premises or the Improvements or Land (or any part of the Improvements or Land affecting the Premises) from or by any Statutory Authority governmental or semi-governmental body.

23.2 The Council may terminate this lease immediately by giving written notice to the Lessee if the Premises or the Improvements or Land (or any part of the Improvements or Land affecting the Premises) is Crown land dedicated to a particular purpose and:

- 23.2.1 it is withdrawn from the Council's care control and management;
- 23.2.2 the purpose for which it has been dedicated is altered under section 18 of the *Crown Land Management Act 2009* (SA); or
- 23.2.3 the dedication is revoked under section 19 of the *Crown Land Management Act 2009* (SA) or other legislation.

23.3 Termination of this lease under this clause releases each party from further liability under this lease, but does not affect a party's rights or liabilities for a prior breach.

24. MISCELLANEOUS

24.1 Approvals and consents

Unless otherwise provided, the Council may in its discretion give (conditionally or unconditionally) or withhold any approval or consent under this lease.

24.2 Entire agreement

This lease:

- 24.2.1 constitutes the entire agreement between the parties about the Premises;
- 24.2.2 supersedes any prior understanding, agreement, condition, warranty, indemnity or representation about the Premises.

24.3 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.

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 Council, if posted by pre-paid post 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).
- 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

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

- 26.1 all legal and other costs incurred by the Council 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 Council under this lease or at law or otherwise arising in consequence of any actual or threatened breach by the Lessee.

27. DISPUTE RESOLUTION

- 27.1 A party must not terminate this lease (except, in the case of the Council, for a breach of an essential term by the Lessee) or commence arbitration or court proceedings (except for urgent equitable or injunctive relief) in respect of a dispute under this lease, unless it first complies with this clause. If one party to the dispute fails to comply with this clause, any other party to the dispute need not comply with this clause.
- 27.2 If there is a dispute between the parties, the aggrieved party must serve a notice on the other party setting out the nature of the dispute and designating its representative with authority to settle the dispute (**Complaint Notice**). The other party must promptly give written notice to the aggrieved party designating its representative with authority to settle the dispute. The parties must then make every effort to resolve the dispute by negotiation.
- 27.3 The representatives must attempt to resolve the dispute within 30 Business Days of service of the Complaint Notice.
- 27.4 If the dispute is not resolved within that period (or any further period the representatives agree), any party which has complied with this clause may in writing terminate the dispute resolution process under this clause and exercise their rights under the lease and terminate the lease and/or commence arbitration or court proceedings in respect of the dispute.
- 27.5 The sole purpose of any exchange of documents and other information or any offer of settlement under this clause is to attempt to settle the dispute. No party may use any documents or information obtained through the dispute resolution process under this clause for any purpose other than a bona fide attempt to settle the dispute.
- 27.6 Nothing in this clause is intended to oust the jurisdiction of any court of competent jurisdiction.

Schedule 1

Premises	That portion of the Land being the area(s) delineated in red on the plan in Annexure A including all Improvements and the Council's Equipment but excluding any perimeter fencing	
Item 1 Land	The whole of the land comprised in Certificate of Title Volume 6063 Folio 665, Volume 5491 Folio 469 and Volume 6063 Folio 666	
Item 2 Initial Term	21 years commencing on [insert] (Commencement Date) and expiring at midnight on [insert]	
Item 3 Rent	Three hundred and twenty four thousand two hundred and sixty dollars (\$324,260.00) per annum (exclusive of GST)(subject to the Rent Subsidy Percentage pursuant to clause 3.3)**	
	<p><i>**If the full Rent Subsidy Percentage is applied (being a percentage of 93%)the amount to be paid for the first years rent would be \$22,698.20 (per annum) (exclusive of GST)</i></p> <p>Subject to review pursuant to clause 4</p>	
Item 4 Maintenance Fee	Fifteen thousand dollars (\$15,000.00) exclusive of GST (as reviewed in accordance with special condition 2)	
Item 5 Review Dates and Review Methods	Review Date	Review Method
	Each anniversary of the Commencement Date except where Rent is reviewed to Current Market Rent	CPI Review (pursuant to clause 4.2)
	On the anniversary of the Commencement Date in the years 2023, 2028, 2033 and 2037	Current Market Rent (pursuant to clause 4.5)
Item 6 Outgoings	Nil	
Item 7 Permitted Use	To use the Premises as a sporting complex (known as the "Marion Sports and Community Club" or "Club Marion") for the promotion and encouragement of games, sport and community activities through the provision, maintenance and development of hospitality facilities and sporting and recreational facilities, amenities and services to the community	
Item 8 Public Liability insurance	\$20,000,000.00	

Schedule 2

Rent Subsidy Criteria	Rent Subsidy Percentage
Good Governance The organisation can demonstrate; <ul style="list-style-type: none"> • Compliance with conditions of current or previous lease/licence agreements with Council • Provision of Annual General Meeting reports and minutes including financial reports (to be audited upon request) • Financial viability, have not incurred a debt with Council and have repaid any loans to Council in line with the loan agreement • Quality Management is integrated into operations - capacity building, good governance and planning etc., evidenced through provision of an annual business plan, current constitution, policies and procedures etc. 	33%
Facility Utilisation The organisation is able to; <ul style="list-style-type: none"> • Provide evidence of membership/user/participant numbers and hours of use on an annual basis. • Provide evidence of activities and initiatives undertaken to increase the utilisation of the facility • Provide evidence of initiatives planned to increase use or participant numbers • Provide evidence of shared use of the facility by the community and other community clubs and organisation to ensure optimal use of the facility 	30%
Social Inclusion The organisation can demonstrate; <ul style="list-style-type: none"> • The activity or service they provide is non-discriminatory and is open to all residents who meet stated criteria for participation. • The use of the facility will increase social inclusion, increase community participation and/or will promote health and well-being in the community • Activities support wider social inclusion targets 	20%
Volunteer Management The organisation can demonstrate that it promotes, supports and develops volunteers	5%
Environmental Initiatives The organisation can demonstrate that is promotes and implements environmental initiatives e.g. waste reduction, recycling, energy efficient practices including investments e.g. solar panels	5%
Maximum subsidy available	93%

Schedule 3 Special conditions

1. LICENCE OF WATER TANK AND BORE PUMP

1.1 Interpretation

In this special condition:

Bore means the bore under the Land.

Bore Pump means the bore pump delineated on the plan attached as Annexure A

Water Tank means the water tank delineated on the plan attached as Annexure A

Licence Area means that portion of the Land water tanks and bore pumps on the plan attached at Annexure A.

1.2 Licence Agreement

1.2.1 In consideration of the Rent, the Council grants to the Lessee a non-exclusive licence over the Licence Area.

1.2.2 The rights conferred by this special condition rest in contract only and do not confer on the Lessee any tenancy, estate or interest in the Licence Area.

1.2.3 The Council may revoke this licence at any time by giving fair and reasonable written notice to the Lessee.

1.2.4 The terms of the licence are otherwise on the terms of this lease.

1.3 Lessee covenants

1.3.1 The Lessee acknowledges that the Licence Area is in good repair and condition on the Commencement Date.

1.3.2 The Lessee must insure and indemnify the Council against all liability whatsoever associated with or resulting from the Lessee's occupation or use of the Licence Area.

1.3.3 The Lessee must comply with all reasonable directions, rules and regulations of the Council in relation to the use of the Licence Area.

1.4 Use of Bore

1.4.1 The Lessee is entitled to access the Bore Pump in the Licence Area and use the Bore water produced by the Bore to water all playing fields (excluding the bowling greens) used and occupied by the Lessee.

1.4.2 The Council will maintain and repair the Bore Pump and all water infrastructure in the Licence area at all times during the Term. Unless otherwise agreed, the Lessee must pay or contribute an amount towards the repair and maintenance costs not exceeding ten (10%) per centum of the amount paid or incurred by Council.

1.4.3 The Council may in its absolute discretion:

1.4.3.1 set restrictions on the quantity of water that may be drawn from the Bore by the Lessee;

1.4.3.2 direct the Lessee to immediately cease drawing water from the Bore; or

1.4.3.3 direct the Lessee to use stormwater or other alternative water sources instead of drawing water from the Bore

and the Lessee must comply at all times with the Council's requirements or directions.

1.4.4 The Council agrees that if it makes a direction under clause 1.4.3.2, the Council will pay for any replacement or additional water infrastructure which the Council determines is necessary or required and unless otherwise agreed the Lessee must pay or contribute an amount towards the cost of any replacement or additional water infrastructure not exceeding ten (10%) per centum of the amount paid or incurred by Council.

2. MAINTENANCE FEE

2.1 Subject to the Lessee's compliance with the terms of this lease, the Council will pay the Lessee the Maintenance Fee annually in advance by each Payment Date to assist with the cost of maintenance of the playing fields to the standard required by Council in this lease.

2.2 The Maintenance Fee will be reviewed annually during all years of the Term to movements in the CPI (in the same manner as set out in clause 4.2).

3. WATER USAGE AND OPEN SPACE

3.1 Notwithstanding Clause 6, the Lessee is only responsible for 10% of the costs and outgoings in relation to water usage and water rates where such water (mains water and bore water) is used in relation to any ovals and other open spaces located on the Premises to which the public has access

3.2 The Council will be responsible to pay the remaining 90% of the costs and outgoings in relation to any water usage and water rates where such water (mains water and bore water) is used in relation to any ovals and other open spaces located on the Premises to which the public has access.

4. COMMON AREAS

4.1 The Lessee acknowledges it uses the Common Area at its risk.

-
- 4.2 The Council may at any time relocate any driveways entrances and exits and change the boundaries and locations of any motor vehicle parking areas available on the Common Area and may rearrange any parking spaces therein or add additional parking spaces.
- 4.3 The Lessee must not otherwise use the Common Areas for any other purpose or allow other persons any right to occupy the Common Areas without the consent of Council.

DRAFT

EXECUTED as an agreement

**Signed for the Corporation of the City
of Marion** 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

**Signed for Marion Sports and
Community Club Incorporated** 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

Annexure A Plan



Annexure B Guidelines for maintenance, repair and building upgrades for Council owned Land

The following list of maintenance responsibilities are a guide only and must be read in accordance with the relevant provisions of the lease to the extent of any ambiguity or conflict.

Description	Council	Lessee	Assessment
1. Heating & Cooling Systems <ul style="list-style-type: none"> - Install/Replace - Repair - Maintain 	Install/Replace	Repair/Maintain	End of useful life
2. Kitchen & Bar – Surfaces & Structure <ul style="list-style-type: none"> - Install/Replace - Repair - Maintain 	Install/Replace	Repair/Maintain	End of useful life
3. Kitchen & Bar – Pipes & Taps <ul style="list-style-type: none"> - Install/Replace - Repair - Maintain 	Install/Replace	Repair/Maintain	Plumbing only
4. Kitchen Extraction Fan(s) <ul style="list-style-type: none"> - Install/Replace - Repair - Maintain 	Nil Responsibility	Total Responsibility	
5. Furnishings & Décor <ul style="list-style-type: none"> - Install/Replace - Repair - Maintain 	Nil Responsibility	Total Responsibility	
6. Cleaning Internal and within 3 metres of building <ul style="list-style-type: none"> - Install/Replace - Repair - Maintain 	Nil Responsibility	Total Responsibility	
7. Ceilings <ul style="list-style-type: none"> - Install/Replace - Repair - Maintain 	Install/Replace	Repair/Maintain	Lessee repaint every 7 years or end of lease
8. Doors <ul style="list-style-type: none"> - Install/Replace - Repair - Maintain 	Install/Replace/Repair	Maintain	End of useful life
9. Doorways – Locks & Keys <ul style="list-style-type: none"> - Install/Replace - Repair - Maintain 	Nil Responsibility	Total Responsibility	

10. Electrical Switches & Power Points - Install/Replace - Repair - Maintain	Nil Responsibility	Total Responsibility	
11. Emergency Lights - Install/Replace - Repair - Maintain	Total Responsibility	Nil Responsibility	End of useful life
12. Exhaust Fans - Install/Replace - Repair - Maintain	Nil Responsibility	Total Responsibility	
13. Fire Blankets - Install/Replace - Repair - Maintain	Nil Responsibility	Total Responsibility	
14. Fire Sprinkler System - Install/Replace - Repair - Maintain	Total Responsibility	Nil Responsibility	End of useful life
15. Fire Hose Reels - Install/Replace - Repair - Maintain	Total Responsibility	Nil Responsibility	End of useful life
16. Fire Extinguishers - Install/Replace - Repair - Maintain	Nil Responsibility	Total Responsibility	
17. Fire Exit Doors - Install/Replace - Repair - Maintain	Install/Replace/Repair	Maintain	End of useful life
18. Floors – Carpet/Vinyl/Tiles - Install/Replace - Repair - Maintain	Nil Responsibility	Total Responsibility	Lessee replace at end of useful life
19. Floors – Timber/Concrete - Install/Replace - Repair - Maintain	Install/Replace	Repair/Maintain	End of useful life
20. Tables - Install/Replace - Repair - Maintain	Nil Responsibility	Total Responsibility	
21. Gas Supply/Pipes - Install/Replace - Repair - Maintain	Total Responsibility	Nil Responsibility	End of useful life
22. Grip Rails in Access Toilets	Nil Responsibility	Total Responsibility	

<ul style="list-style-type: none"> - Install/Replace - Repair - Maintain 			
23. Graffiti - External (on the outside of the leased buildings, boundary fences and common areas) Graffiti within the leased buildings	Total Responsibility Nil Responsibility	Nil Responsibility Total Responsibility	
24. Grease Traps <ul style="list-style-type: none"> - Install/Replace - Repair - Maintain 	Nil Responsibility	Total Responsibility	
25. Hand Drying Facilities – Electric/Paper <ul style="list-style-type: none"> - Install/Replace - Repair - Maintain 	Nil Responsibility	Total Responsibility	
26. Hot Water System <ul style="list-style-type: none"> - Install/Replace - Repair - Maintain 	Install/Replace	Repair/Maintain	End of useful life
27. Illuminated Exit Lights <ul style="list-style-type: none"> - Install/Replace - Repair - Maintain 	Install/Replace	Repair/Maintain	
28. Lighting – Interior <ul style="list-style-type: none"> - Install/Replace - Repair - Maintain 	Nil Responsibility	Total Responsibility	
29. Lighting – Exterior <ul style="list-style-type: none"> - Install/Replace - Repair - Maintain 	Install/Replace	Repair/Maintain	Lessee to replace globes
30. Mirrors <ul style="list-style-type: none"> - Install/Replace - Repair - Maintain 	Nil Responsibility	Total Responsibility	
31. Paintwork – Internal <ul style="list-style-type: none"> - Install/Replace - Repair - Maintain 	Nil Responsibility	Total Responsibility	Lessee repaint every 7 years or end of lease if less than 5 years
32. Paintwork – External <ul style="list-style-type: none"> - Install/Replace - Repair - Maintain 	Total Responsibility	Nil Responsibility	Assessment to be undertaken in 2018/19 to

			determine program
33.Pest Control - Install/Replace - Repair - Maintain	Nil Responsibility	Total Responsibility	
34.Security Alarm System - Install/Replace - Repair - Maintain	Nil Responsibility	Total Responsibility	
35.Smoke Detectors - Install/Replace - Repair - Maintain	Install /Replace	Repair/Maintain	
36.Showers - Install/Replace - Repair - Maintain	Install/Replace	Repair/Maintain	
37.Soap Dispensers - Install/Replace - Repair - Maintain	Nil Responsibility	Total Responsibility	
38.Staircase - Install/Replace - Repair - Maintain	Install/Replace/Repair	Maintain	End of useful life
390.Tapware - Install/Replace - Repair - Maintain	Install/Replace/Repair	Maintain	End of useful life
40.Telecommunications - Install/Replace - Repair - Maintain	Nil Responsibility	Total Responsibility	
41.Toilets – Cisterns & Bowls - Install/Replace - Repair - Maintain	Install/Replace/Repair	Maintain	End of useful life
42.Water Supply/Pipes/Systems (Mains or Aquifer Storage Recharge) - Install/Replace - Repair - Maintain (Bore water refer to Licence Agreement)	Install/Replace/Repair	Maintain	
43.Window Sills - Install/Replace - Repair - Maintain	Install/Replace	Repair/Maintain	End of useful life

44.Windows – Glass - Install/Replace - Repair - Maintain	Install/Replace/Repair	Maintain	
45.Windows – Structural - Install/Replace - Repair - Maintain	Install/Replace/Repair	Maintain	End of useful life
46.Water Pipes - Install/Replace - Repair - Maintain	Install/Replace/Repair	Maintain	
47.Downpipes - Install/Replace - Repair - Maintain	Install/Replace/Repair	Maintain	End of useful life
48.Gutters & Pipework - Install/Replace - Repair - Maintain	Total Responsibility	Nil Responsibility	End of useful life
49.Electrical Supply/Meter Board - Install/Replace - Repair - Maintain	Total Responsibility	Nil Responsibility	End of useful life
50.Fixed RCD's - Install/Replace - Repair - Maintain	Install/Replace/Repair	Maintain	End of useful life
51.Pipes – External - Install/Replace - Repair - Maintain	Total Responsibility	Nil Responsibility	End of useful life
52.Roof - Install/Replace - Repair - Maintain	Total Responsibility	Nil Responsibility	End of useful life
53.Roller Doors - Install/Replace - Repair - Maintain	Install/Replace/Repair	Maintain	End of useful life
54.Security Screen Doors - Install/Replace - Repair - Maintain	Install/Replace/Repair	Maintain	End of useful life
55.Signs - Install/Replace - Repair - Maintain	Nil Responsibility	Total Responsibility	

56.Solar Panels and System <ul style="list-style-type: none"> - Install/Replace - Repair - Maintain 	Total Responsibility	Nil Responsibility	Lessor has agreed to install solar panel as part of the Precinct Plan
57.Underground Storm Water System <ul style="list-style-type: none"> - Install/Replace - Repair - Maintain 	Install/Replace/Repair	Maintain (keep roof gutters and drains entries free of debris)	End of useful life
58.Bore systems including sheds <ul style="list-style-type: none"> - Install/Replace - Repair - Maintain 	Install/Replace/Repair/Maintain	Nil Responsibility	
59.Verandah – Posts <ul style="list-style-type: none"> - Install/Replace - Repair - Maintain 	Install/Replace/Repair	Maintain	End of useful life
60.Walls – External <ul style="list-style-type: none"> - Install/Replace - Repair - Maintain 	Total Responsibility	Nil Responsibility	
61.Water Tanks <ul style="list-style-type: none"> - Install/Replace - Repair - Maintain 	Replace/Repair/Maintain	Nil Responsibility	End of useful life
62.Carpark Surfaces <ul style="list-style-type: none"> - Install/Replace - Repair - Maintain 	Install/Replace/Repair/Maintain	Nil Responsibility	
63.Boundary Fencing & Gates <ul style="list-style-type: none"> - Install/Replace - Repair - Maintain 	Total Responsibility	Nil Responsibility	End of useful life
64.Unimproved Surfaces <ul style="list-style-type: none"> - Install/Replace - Repair - Maintain 	Install/Replace/Repair	Maintain	Lessee Keep Clean
65.Garden Areas <ul style="list-style-type: none"> - Install/Replace - Repair - Maintain 	Nil Responsibility	Total Responsibility	
66.Entrance Feature <ul style="list-style-type: none"> - Install/Replace - Repair - Maintain 	Nil Responsibility	Total Responsibility	
67.Irrigation System <ul style="list-style-type: none"> - Install/Replace - Repair - Maintain 	Install/replace shared responsibility	Repair/Maintain	Council has total responsibility

			for Open Space only
68.Lights & Lighting Towers – Sporting Grounds <ul style="list-style-type: none"> - Install/Replace - Repair - Maintain 	Install/Replace Repair/Maintain	Replace Globes	End of useful life
69.Pathways <ul style="list-style-type: none"> - Install/Replace - Repair - Maintain 	Install/Replace/Repair	Maintain	Lessee Keep Clean
70.Play Equipment (Council Installed) <ul style="list-style-type: none"> - Install/Replace - Repair - Maintain 	Total Responsibility	Nil Responsibility	
71.Seating – Public Benches <ul style="list-style-type: none"> - Install/Replace - Repair - Maintain 	Total Responsibility	Nil Responsibility	End of useful life
72.Sheds <ul style="list-style-type: none"> - Install/Replace - Repair - Maintain 	Nil Responsibility	Total Responsibility	
73.Public Toilets (separate to the building) <ul style="list-style-type: none"> - Install/Replace - Repair - Maintain 	Total Responsibility	Nil Responsibility	End of useful life
74.Bowling Greens <ul style="list-style-type: none"> - Install/Replace - Repair - Maintain 	Nil Responsibility	Total Responsibility	
75.Cricket Nets and Turf Pitches <ul style="list-style-type: none"> - Install/Replace - Repair - Maintain 	Nil Responsibility	Total Responsibility	
76.Oval grounds maintenance <ul style="list-style-type: none"> - Install/Replace - Repair - Maintain 	Install/Replace/Repair	Maintain	Refer to Maintenance Requirements in the lease Grounds to be maintained to TQVS Level 3
77. Line marking Ovals <ul style="list-style-type: none"> - Install/Replace - Repair - Maintain 	Nil Responsibility	Total Responsibility	

78.Covering or uncovering hardwickets - Install/Replace - Repair - Maintain	Total Responsibility	Nil Responsibility	
79.All Goal Posts - Install/Replace - Repair - Maintain	Total Responsibility	Nil Responsibility	
80.Hard wickets - Install/Replace - Repair - Maintain	Total Responsibility	Nil Responsibility	
81.Scoreboards - Install/Replace - Repair - Maintain	Nil Responsibility	Total Responsibility	Landlord Approval Required
82.Improvements, coaches boxes, etc. - Install/Replace - Repair - Maintain	Nil Responsibility	Total Responsibility	Landlord Approval Required

Emergency contact details:

City of Marion After Hours Number 8375 6666

Annexure C Initial Precinct Plan

Proposed Works		Estimated Project Cost (Excl GST)	MSCC Funded 2017/20 (Excl GST)	Council 2017/20 (Excl GST)
Irrigation replacement drainage	<p>The timing to be confirmed by Marion Sports and Community Club to minimise impact on use of the ovals.</p> <p>Indicative dates:</p> <ul style="list-style-type: none"> - Football oval to commence works August 2018 - Soccer pitch 1 & 2 commence works December <p>Drainage</p> <p>An investigation on the condition and treatment options for the playing fields has been undertaken. The proposed treatment options and ongoing maintenance will improve the drainage and condition. All drains have been inspected, pump repaired and review of car park designs undertaken. Drainage works on playing fields will be undertaken when irrigation is installed.</p>	\$480,000	\$240,000	\$240,000
Northern carpark to be upgraded	<p>The car park has been designed and provided to clubs for feedback. Landscaping and change to tennis club entrance to be undertaken.</p> <p>Work has commenced on site.</p>	\$310,000	Nil	\$310,000
Southern carpark and area between the oval and the Bowling Club to be upgraded	<p>The works have been designed and provided to the club. The work includes car park resurfacing and sealing behind bowling clubs, car park layout and drainage.</p> <p>Work has commenced on site.</p> <p>Line marking will be postponed pending the outcome of the consultation on access points for the site.</p>	\$380,000	Nil	\$380,000
Northern soccer field	<p>Council has supported the soccer club to apply for funding through the</p>	\$65,000	\$20,000	\$20,000

lights – Pitch 2	Office of Recreation and Sport (ORS).			(subject to ORS \$20,000 and Marion Soccer Club \$5,000)
Southern soccer field lights – Pitch 1 and Football Oval	Council to support the football club to apply for funding through the Office of Recreation and Sport (ORS).		To be determined	To be determined
Solar Panels and energy efficiency	Council has approved funding for solar panels and energy efficiencies initiatives. Work to be undertaken 2018/19.	\$129,000	Nil	\$129,000
Softball Nets	Council to support the softball club to apply for funding through the Office of Recreation and Sport.	\$40,000	Nil	Council to consider subject to ORS and CFPP
Storage Facilities	Landlord Approval has been granted for a shed and two undercroft storage areas. Additional undercroft storage is to be provided for the soccer club.	\$13,510	\$13,510 Completed \$14,000	
Bowling Club - kitchen	The club has advised the kitchen equipment and flooring has reached the end of useful life. The Club has indicated they may be in a position to contribute to the upgrade.	\$95,000		\$45,000 (subject to Office for Recreation and Sport \$45,000 and Marion Bowls Club \$5,000)
Maintenance of ovals and upkeep of cricket pitches			\$80,000 per annum	\$15,000 per annum (ex GST)