

Item No: 19.1

File No: 16.51.1.3

Date: 21 January 2019

Attachment: A, B C, D

Meeting: Council

Title: Walkerville Bowling & Community Club Lease Renewal

Responsible Manager: Acting Chief Executive Officer, Joshua Bowen

Author: Group Manager, Corporate Services, Katy Bone

Key Focus Area: Strategic Community Plan Focus area 2- Sustainable and resilient future

Key Focus Area: Strategic Community Plan Focus area 4 – Healthy, connected and inspired community

Type of Report: Decision Required

Pursuant to Section 83(5) of the *Local Government Act 1999*, the Chief Executive Officer indicates that the matter contained in this report may, if the Council so determines, be considered in confidence pursuant to Section 90(2) of the *Local Government Act 1999* on the basis that the information contained in the attached report is information of the nature specified in subsections 90(3)(d) of the Act being to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party.

Recommendation (Public)

Pursuant to s90(3)(d)

Pursuant to section 90(2) of the *Local Government Act 1999* the Council orders that all members of the public, except Council's Chief Executive Officer Kiki Magro, and Council Secretariat Jayde Hanna be excluded from attendance at the meeting for Agenda Item Walkerville Bowling & Community Club Lease Renewal.

The Council is satisfied that, pursuant to section 90(3)(d) of the Act, the information to be received, discussed or considered in relation to this Agenda Item is commercial information of a confidential nature (not being a trade secret) the disclosure of which could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party.

Recommendation (Confidential)

1. In accordance with Sections 202 of the Local Government Act 1999 ("the Act"), subject to obtaining the endorsement of Council, a lease is granted to the Walkerville Bowling & Community Club Incorporated for the portion of land as described within Certificate of Title Volume 5255 Folio 827 for a further term, subject to the satisfactory acceptance of terms and conditions:
 - a) The term of the lease shall be for a period of 5 years, commencing 1 November 2019 and expiring 31 October 2024.
 - b) The lease includes a provision for Council to terminated the lease as part of a propose redevelopment by providing 6 months' notice (Section 18).
 - c) The lease fee shall be initially \$1527.00 per annum with annual rental reviews pursuant to the CPI method.
 - d) Any other terms and conditions as set out in accordance with Council's "Lease and Licence for Community Land and Buildings Policy."
2. That Council authorises the Mayor and Chief Executive Officer to execute all documentation relevant to the lease agreement, including ancillary documents between the Walkerville Bowling & Community Club Incorporated and Council for the leasing of portion of land and infrastructure comprised in Certificate of Title Volume 5255 Folio 827 and in so doing affix the common seal of Council.

Recommendation (Public)Pursuant to s.91(7)

That having considered Agenda Item Walkerville Bowling & Community Club Incorporated Lease Renewal in confidence under section 90(2) and 90(3)(d) of the *Local Government Act 1999*, the Council, pursuant to section 91(7) of that Act orders that the report entitled Walkerville Bowling & Community Club Incorporated Lease Renewal, its attachments and the minutes relevant to this Agenda Item be retained in confidence for a period of 12 months or until a new lease has been signed, a public announcement has been made, the matter has been finalised / excepting that Council authorises the release of the minutes to substantive party/parties to enable enactment of the resolution and that pursuant to Section 91(9)(c) of the *Local Government Act 1999* the Council delegates to the Chief Executive Officer the power to review and revoke this Order;

and

That Council resolves to end its confidential deliberations pursuant to Section 90(2) of the *Local Government Act 1999* Council and re-admit the public.

Summary

To provide Council with an opportunity to consider the renewal of lease held with Walkerville Bowling & Community Club Incorporated following notice of their intention to renew received 20 July 2018 (*refer 'Attachment A'*).

Background

Council, at its meeting on 20 August 2018, were advised and requested to note, by way of an Information Report, submitted by the Property & Contracts Officer, that the Walkerville Bowling & Community Club had demonstrated their intention to exercise their options and renew the lease for a further 12 month term, pursuant to Clause 18 & Schedule Item 4 of the existing agreement.

“CNC66/18-19

To advise Council of Walkerville Bowling & Community Club intention to exercise the option to renew the current lease agreement for a further term of twelve (12)”

Following the exercising of option, the Walkerville Bowling & Community Club Incorporated expressed to Council, as a result of continued business improvement and increased financial sustainability, their desire to secure the tenure prior to the expiration and commit to a further term beyond the expiration of their recently acknowledged renewal term.

A subsequent confidential decision report was presented to Council during their meeting on 17 September 2018 informing of the Club’s expression of interest and proposal of draft rates and contractual terms and conditions. Council provided their acknowledgement of this interest, however given the underwhelming return expected as a result of the historic agreed rates, Council requested that the Administration conduct a comparative market analysis in order to obtain and present the leasing particulars of comparable facilities owned by neighbouring Councils.

The intention of the comparative market analysis was to provide the Elected Members with a summary of key factors such as fees and charges, rate of return and permitted use/nature of the lease, as this would then enable and cater for an informed decision based on current market trends and conduct of Council bodies.

Following the presentation of the analysis, Council resolved during the meeting held 15 October 2018;

“CNC159/18-19

Recommendation (Public)

That Council receive and note the comparative market analysis for leasing fees that are similar in nature to the Walkerville Bowling & Community Club.”

Discussion/Issues for Consideration

The Walkerville Bowling & Community Club Incorporated have sought a renewal of the lease agreement, subsequent to the expiration of the current term, due to expire 31 October 2019, over the portion of land comprised within Certificate of Title Volume 5255 Folio 827, under the following terms:

1. Exclusive use of the portion of the land comprised in Certificate of Title Volume 5255 Folio 827 being the area delineated in the plan (*refer ‘Attachment C’*)
2. The term of the lease shall be for a period of eight years, commencing **1 November 2019** and expiring **31 October 2027**;
3. The term is to consist of three right of renewal options as set out within **Table 1.1: Estimated Proposed Rental Return**;

4. Rent reviews and increases are to occur only upon the anniversary of the terms commencement, subject to the CPI method of review;
5. Agreement is to be subject to the terms and conditions of the original lease agreement, dated October 2017.

Table 1.1: Estimated Proposed Rental Return (2017 CPI)

		Renewal	CPI (%)	Increase Value	New Rent Value
Current Term	01/11/2018 – 31/10/2019		1.6		\$1,527.00
New Term Commencement	01/11/2019 – 31/10/2021		1.8	\$24.43	\$1,551.43
Renewal 1	01/11/2021 – 31/10/2024	16/09/2024	2.3	\$27.93	\$1,579.35
Renewal 2	01/11/2024 – 31/10/2026	16/09/2026	2.3	\$36.33	\$1,615.68
Renewal 3	01/11/2026 – 31/10/2027			\$37.16	\$1,652.84

** New Rent Value figures are approximate figures only. Totals are based upon the 2017 CPI table

TERM

The request for an 8 year term, inclusive of three formal rights of renewal throughout the duration of the term is consistent with Council's *"Leases and Licences for Community Land and Buildings Policy"*.

Where leases for a period of longer than five years are sought, the following points must be considered before seeking Council endorsement of the granting of the lease:

- Development of a building management plan by the lessee and approved by the Authorised Officer, including a condition audit and schedule of improvements above and beyond those implied by a standard five year lease.
- A statement reflecting the necessity for a longer term lease. This may be desired to secure significant external funding for facility upgrades.
- The initial lease term would remain at five years and each subsequent renewal of five years would only be exercised after the Authorised Officer have audited the expectations and outcomes associated with the condition audit, schedule of improvements and any other criteria placed on the community organisation.
- Whether the lessee has abided by the conditions of any prior leases.
- Residential impact should be reviewed and monitored including community consultation if required by Section 202 of the LG Act.

ORGANISATIONAL IMPACT

Strategic Plan 2016 – 2020

WBCC promotes and aligns with the objectives outlined within Key Focus Area 4, namely within the following initiatives:

- enhance community wellbeing
- provide active and passive recreational spaces
- active living is promoted and encouraged

WBCC creates a centre of leisure, recreation and activity and in doing so, expresses a unique character and identity, an area that inspires pride in its residents and one that people enjoy visiting. The Club possess an incredible commitment in the providing of a key public recreational facility within the community. Thus, supporting the health and wellbeing of its members and guest participants.

In addition to the leasing developments with the Walkerville Bowling Club, the site of the WBCC forms part of the strategic considerations for the Walkerville Oval Master Planning.

A Redevelopment, Asset Rationalisation and Demolition clause has been added in section 18. This allows Council to provide the lessee with 6 months' notice if the lease agreement needs to be terminated as part of a proposed redevelopment.

ENGAGEMENT

Classification of public land is provided for in Chapter 6, Part 2, Division 1 of the *Local Government Act 1999* ("the Act"). Classification can be either "community" or "operational". The purpose of classification is to identify clearly that land which should be kept for use by the general public (community) and that land which need not (operational). The major consequence of classification is that it determines the ease or difficulty with which land may be alienated by sale, leasing or some other means.

*Local Government Act 1999 (SA)***¹Section 202 - Alienation of community land by lease or licence**

- (1) *A council may grant a lease or licence over community land (including community land that is, or forms part of, a park or reserve).*
- (2) *Before the council grants a lease or licence relating to community land, it must follow the relevant steps set out in its public consultation policy.*
- (3) *However, a council need not comply with the requirements of subsection (2) if—*
 - (a) *the grant of the lease or licence is authorised in an approved management plan for the land and the term of the proposed lease or licence is five years or less; or*
 - (b) *the regulations provide, in the circumstances of the case, for an exemption from compliance with a public consultation policy.*
- (4) *A lease or licence is to be granted for a term not exceeding 42 years and the term of the lease or licence may be extended but not so that the term extends beyond a total of 42 years. A lease or licence must be consistent with any relevant management plan.*
- (4a) *Subsection (4) does not prevent a new lease or licence being granted at the expiration of 42 years (subject to the other requirements of this Act or any other law).*
- (5) *A lease or licence may provide for—*
 - (a) *the erection or removal of buildings and other structures for the purpose of activities conducted under the lease or licence;*
 - (b) *the exclusion, removal or regulation of persons, vehicles or animals from or on the land, and the imposition of admission or other charges;*
 - (c) *any other matter relevant to the use or maintenance of the land.*
- (6) *A lease or licence must be consistent with any relevant management plan.*
- (7) *This section operates subject to the provisions of the Adelaide Park Lands Act 2005 in respect of the Adelaide Park Lands under that Act.*

As specified within the above mentioned section of the Local Government Act 1999, the obligation on Council to initiate public consultation with the respect to the granting of a new lease to WBCC only exists where the term is in excess of five years.

In the event a term in excess of a five year term is granted and public consultation is required, Council is to undertake procedures in accordance with 1Part 5 – Public consultation policies of the Act.

LEASE FEE

Agreements held with WBCC, due to its community group status has historically been of a reduced, “pepper corn” arrangement.

¹ Local Government Act 1999—1.8.2017
The council as a body corporate—Chapter 4
Public consultation policies—Part 5

As outlined within Table 1.1, the leasing fee shall commence at a rate of \$1,527.00 (exc. GST) per annum, subject to annual review utilising the CPI method.

In addition to the annual leasing fee, WBCC shall remain liable for the payment of outgoings for the duration of tenure as per the original lease, dated October 2017.

Council's demonstrated conduct is that if a facility is to be used by a community organisation that's primary purpose is to deliver a community service to the residents and beyond, including that of the provision of recreational activities, a discount or "pepper corn" fee is adopted within the arrangements.

Such arrangements subject the lessee to satisfy Council's expectations, within just reason, regarding the maintenance and general upkeep of the site which are established at the commencement by mutual agreement and structured within an Annexure to the agreement labelled Maintenance schedule.

FINANCIAL IMPLICATIONS

The proposed lease largely seeks a continuation of the status quo. Officers will review the outgoings to ensure they are covered and will seek to negotiate some contribution towards capital renewal either via a lump sum or rent.

Under the current arrangements, WBCC is responsible for all outgoings and providing Council with a rental fee of \$1,500.00 (exc. GST) per annum, being the rental fee payable to Council by WBCC for use of this land annually. It is suggested that lease payments remain consistent and in accordance that of the original agreement. Therefore, as identified within **Table 1.1**, the proposed rental fee payable from commencement of the renewal term shall be \$1,527.00 (exc. GST).

Council as Lessor of the site, in accordance with Section 13 of the Retail & Commercial Leases Act 1999, cannot impose a requirement or obligation for the lessee to make contributions towards capital expenditure except in limited circumstances. Exhausted funds will be offset by rental income generated during the term of the lease.

All revenue received from the establishment of the lease agreement will be treated as general revenue in the year it is received and will be considered as part of Council's annual budget.

Expenditure related to the development of the documentation for the lease agreement is included in the Financial Year Ending 2018/19 budget, should Council grant the entry of the lease for a further term.

LEGAL IMPLICATIONS

Should the term exceed five years, the Community Engagement process will be undertaken in accordance with Part 5 – *Public consultation policies* of the *Local Government Act 1999*.

All statutory requirements and ancillary as dictated to Council by the *Local Government Act 1999* and provisions specified within Council's *Lease & License of Community Land & Buildings* have been met.

COMPARATIVE MARKET ANALYSIS

As previously mentioned within this report, as a result of the resolution of the September meeting, in October Council was provided with a summary of key information pertaining to similar assets, owned and managed by neighbouring Councils, forming a market comparison.

It is evident by the information obtained and compiled within table below that it is common for Councils to establish leases for similar assets on a 'peppercorn' basis. With the exception of few, namely City of Unley, City of Tea Tree Gully & City of Marion, it is evident that market rental values are not generally

obtained due to a variety of discounts and rebates provided to Lessees, which are determined by selection criteria within the Leasing & Licensing Policies adopted.

Comparative market analysis of assets of similar nature to Walkerville Bowling & Community Club as follows:

	FACILITY	ANNUAL FEE	POLICY & CLAUSE
TOWN OF WALKERVILLE	Walkerville Bowling & Community Club	\$1,527.00	Lease and Licence for Community Land and Buildings Policy
CITY OF SALISBURY	Salisbury Bowling Club	\$1.00 + Outgoings	Club Fee Policy Rent calculated on 0.3% of the replacement value of the primary building leased, furthermore fee calculated on 5% of an averaged reserve maintenance cost at the commencement of the lease the annual fee for playing fields is calculated on 5% of an averaged reserve maintenance cost at the commencement of the lease;
CITY OF HOLDFAST BAY	Brighton Croquet Club	\$838.00 + Outgoings	Commercial Leasing & Licensing Policy Rent determined by independent valuation prior to negotiations with Lessee which is based upon a value which would be reasonably obtained
CITY OF MARION	Marion Sports & Community Club Incorporated	\$15,000.00 + Outgoings	Leasing & Licensing Policy Initial rent is determined based upon market rate. Lessee's, based upon selected criteria, are eligible for discounts of up to 93%. A minimum fee of \$1,000 (excluding GST) per annum shall be payable should the market rate and subsidy be calculated at less than \$1,000.
UNLEY COUNCIL	Sturt Bowling Club	\$2,631.44 + Outgoings	Property Management Policy Lease and license fees are established as a percentage of the assessed Capital Replacement Value of the property, fixed at 1% for local community groups, 3% for state-wide bodies and 8% for semi commercial groups. A minimum fee of \$750 (excluding GST) per annum shall be payable should the market rate and subsidy be calculated at less than \$750.
CITY OF TEA TREE GULLY	Modbury Bowling Club	\$1.00 + Outgoings	Leases and Licences to Sporting and Community Organisations Policy Annual rent is calculated at 6% of the current value of the leased site as per Council's asset register. Also, the fee will be determined based upon the length of tenure, and subsequent increases at renewal be indexed by the Consumer Price Index on an annual basis.

CITY OF BURNSIDE	The Kensington Marryatville Bowling Club	\$1.00 + Outgoings	Leasing & Licensing of Community Facilities Where a facility is to be used by a community organisation that will deliver a community service to our residents, including sporting and social opportunities, a peppercorn rent of \$1 per annum will be applied.
CITY OF NORWOOD & ST PETERS	Trinity Gardens Bowling Club	\$10.00 + Outgoings	No Existing Policy Common trends amongst sporting and community clubs is a peppercorn arrangement of between \$10 - \$100 per annum

Options for Consideration

OPTION 1

That Council notes previous discussion held relating to matters pertaining to the leasing arrangements and the negotiations thereof with Walkerville Bowling & Community Club Incorporated (the 'Club').

1. In accordance with Sections 202 of the Local Government Act 1999 ("the Act"), subject to the obtaining the endorsement of Council, a lease is granted to the Walkerville Bowling & Community Club Incorporated for the portion of land as described within Certificate of Title Volume 5255 Folio 827 for a further term, subject to the satisfactory acceptance of terms and conditions:
 - a) The term of the lease shall be for a period of 5 years, commencing 1 November 2019 and expiring 31 October 2024.
 - b) The lease includes a provision for Council to terminated the lease as part of a propose redevelopment by providing a 6 months' notice (Section 18)
 - c) The lease fee shall be initially \$1527.00 per annum with annual rental reviews pursuant to the CPI method, and
 - d) Any other terms and conditions as set out in accordance with Council's "Lease and Licence for Community Land and Buildings Policy."
2. That Council authorises the Mayor and Chief Executive Officer to execute all documentation relevant to the lease agreement, including ancillary documents between the Walkerville Bowling & Community Club Incorporated and Council for the leasing of portion of land and infrastructure comprised in Certificate of Title Volume 5255 Folio 827 and in so doing affix the common seal of Council.

OPTION 2

That Council notes previous discussion held relating to matters pertaining to the leasing arrangements and the negotiations thereof with Walkerville Bowling & Community Club Incorporated (the 'Club').

In accordance with Sections 202 of the Local Government Act 1999 (“the Act”), subject to the obtaining the endorsement of Council, a lease is granted to the Walkerville Bowling & Community Club Incorporated for the portion of land as described within Certificate of Title Volume 5255 Folio 827 for a further term, subject to the satisfactory acceptance of terms and conditions:

1. The term of the lease shall be for a period of 8 years, commencing 1 November 2019 and expiring 31 October 2027, inclusive of three right of renewal:
 - a) Authorise Council Administration to engage in public consultation procedures with respect to the lease renewal being in excess of five years, in accordance with Part 5 – Public consultation policies of the Local Government Act 1999.
 - b) The lease includes a provision for Council to terminated the lease as part of a propose redevelopment by providing a 6 months’ notice (Section 18).
 - c) The lease fee shall be initially \$1527.00 per annum with annual rental reviews pursuant to the CPI method, and
 - d) Any other terms and conditions as set out in accordance with Council’s “**Lease and Licence for Community Land and Buildings Policy**”.
2. Authorises pursuant to section 38 and 44 of the Local Government Act 1999, the Chief Executive Officer executes all documentation relevant to the lease agreement and ancillary between the Walkerville Bowling & Community Club Incorporated for the leasing of portion of land and infrastructure comprised in Certificate of Title Volume 5255 Folio 827.

OPTION 3

That Council notes previous discussion held relating to matters pertaining to the leasing arrangements and the negotiations thereof with Walkerville Bowling & Community Club Incorporated (the ‘Club’).

Do not offer the Walkerville Bowling & Community Club Incorporated any lease and explore termination options.

Preferred Option & Reasoning

OPTION ONE:

Option one would give both WBCC the long term security and Council the ability to review the lease renewal options in line with the Walkerville Oval Master Planning project.

The decision would support WBCC by contributing to the community’s well-being through indirect investment in sports and recreation along with providing a safe and supportive facility for the community. This is consistent with the Council’s objective of maintaining a vibrant and healthy community and key focus area initiatives.

WBCC continue to fulfil all obligations under the terms of their current lease including community use and access.

Attachments

Attachment A	Request of Extension of Lease
Attachment B	Lease Agreement 2017 - 2019
Attachment C	Draft – Lease Agreement 2018 - 2023
Attachment D	Draft – Disclosure Statement 2018 – 2023

Released

ATTACHMENT A



Walkerville Bowling & Community Club Incorporated

Address Smith Street, Walkerville SA **ABN** 16 853 237 1525081

Postal PO Box 57, Walkerville SA 5081

Phone/Fax 08 8344 2064 **Email** secretary@walkervillebowls.com.au

To the Town of Walkerville
Property Manager

Kate Arthur

Hi Kate,

On behalf of the Walkerville Bowling & Community Club Inc. We wish to confirm to extend the Lease for the 1 year term commencing 1st November 2018 with rental to be reviewed to CPI, as per lease with variation to allow three further rights to extend. The first for 3years then 2years, and then a further 2 years.

I.e. 1yr x 3yrs x 2yrs x 2yrs

Alternately it may be easiest/simpler to avoid documentation costs & inconvenience of waiting for our notification regarding options to extend to simply enter into an eight year term, by way of variation to existing Lease, as at 1st November 2018 with an early termination clause allowing us to terminate the lease any year on the anniversary of the commencement date particularly given there is already a redevelopment clause.

Please let me know your thoughts and I will discuss with the board. I will also get back to you regarding C green

Yours Faithfully

CA HOLDING

Christine Holding
Secretary
Walkerville Bowling &
Community Club Inc.

Email secretary@walkervillebowls.com.au



ATTACHMENT B

16.51.1.3

AGR 201732472

CORPORATION OF THE TOWN OF WALKERVILLE

(Council)

AND

WALKERVILLE BOWLING CLUB INCORPORATED
trading as Walkerville Bowling and Community Club

(Lessee)

PORTION OF LAND

COMMUNITY FACILITIES LEASE

WALKERVILLE BOWLING & COMMUNITY CLUB

SCHEDULE

ITEM 1 Premises	The portion of the land comprised in Certificate of Title Volume 5255 Folio 827 being the area delineated in the Plan attached as Annexure A	
ITEM 2 Land	The whole of the land comprised in Certificate of Title Volume 5255 Folio 827	
ITEM 3 Initial Term	One (1) year commencing on 1 November 2017 (Commencement Date) and expiring at midnight on 31 October 2018	
ITEM 4 Renewal(s)	One (1) year commencing on 1 November 2018 and expiring at midnight on 31 October 2019 (at Council's discretion pursuant to clause 18)	
ITEM 5 Rent	One thousand five hundred dollars (\$1,500.00) per annum (exclusive of GST) (subject to review pursuant to clause 8)	
ITEM 6 Rent Review Dates and Review Method	Review Dates 1 November 2018	Review Method CPI Review
ITEM 7 Permitted Use	Lawn bowling club	
ITEM 8 Public Risk Insurance	Twenty Million Dollars (\$20,000,000.00)	
ITEM 9 Special Conditions	The terms and conditions (if any) set out in Annexure B are deemed to be incorporated into this Lease and, in the event of any inconsistency with the terms and conditions contained in the body of this Lease, then the Special Conditions will prevail.	

THIS LEASE is dated

2017

BETWEEN

CORPORATION OF THE TOWN OF WALKERVILLE ABN 49 190 949 882 of 66 Walkerville Terrace, Gilberton SA 5081 (**Council**)

AND

WALKERVILLE BOWLING CLUB INCORPORATED ABN 16 853 237 152 trading as Walkerville Bowling and Community Club of c/- PO Box 57, Walkerville SA 5081 (**Lessee**)

INTRODUCTION

- A. The Council is the registered proprietor 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.

TERMS

1. ACKNOWLEDGEMENT OF INTRODUCTION

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

2. DICTIONARY

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 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, 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 South Australia.

Commencement Date means the commencement date of the Initial Term 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 8.3.

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

Default Rate means the rate which is 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 One Hundred Thousand Dollars (\$100,000.00) and if there is more than one rate published, the highest of those rates.

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.

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, Hirers and other invitees of the Lessee.

Lessee's Equipment means any and all fixtures and fittings and other equipment installed in or brought onto 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 area of the Land 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 described in Annexure C.

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 and includes:

- (a) the cost of insuring the Building including all improvements and Building Services;
- (b) the amount of any excess or deductible not paid or excluded under any insurance policy taken out by the Council;
- (c) all costs (including wages and other usual employment on-costs) of the management, control and administration of the Land or Building;
- (d) 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 Areas or elsewhere in the Building that are provided from time to time;
- (e) all costs of the Council in connection with the maintenance, repair, replacement and renovation of the Building from time to time;
- (f) all costs of the Council in connection with the cleaning, lighting, heating and air-conditioning of 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;
- (g) all costs of the Council in relation to establishing, maintaining, repairing and replacing common signs, notices and directory boards within the Building; and
- (h) 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).

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

Permitted Use means the use described in Item 7.

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).

Rent means the amount 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.

Special Conditions means the special conditions to this Lease described in Item 9.

Statutory Authorities means any authorities created by or under any relevant Legislation including the Council in its separate capacity as such an Authority.

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 of this Lease commencing on the Commencement Date described in Item 3 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 is appointed by agreement of the Council and the Lessee or, failing agreement within fourteen (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 President or Acting President of the Institute;
- (b) who has practised as a valuer with a minimum of five (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 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.

3. INTERPRETATION

In this Lease, unless the contrary intention appears:

- 3.1 a reference to this Lease is a reference to this document;
- 3.2 words beginning with capital letters are defined in clause 2;
- 3.3 a reference to a clause is a reference to a clause in this Lease;
- 3.4 a reference to an Item is a reference to an item in the Schedule;
- 3.5 a reference to the Schedule is a reference to the schedule of this Lease;
- 3.6 a reference to an Annexure is a reference to an annexure to this Lease;
- 3.7 headings are for convenience only and do not affect interpretation;
- 3.8 the singular includes the plural and vice versa;
- 3.9 a reference to an individual or person includes a corporation, partnership, joint venture, authority, trust, state or government and vice versa;

- 3.10 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;
- 3.11 a reference to any document (including this Lease) is to that document as varied, novated, ratified or replaced from time to time;
- 3.12 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;
- 3.13 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;
- 3.14 'including' and similar expressions are not and must not be treated as words of limitation;
- 3.15 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
- 3.16 any Special Condition in Item 9 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.

4. RETAIL AND COMMERCIAL LEASES ACT

- 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.
- 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) shall be unenforceable or void but only to the extent that it is expressly made unenforceable or void by the Act.

5. GRANT OF LEASE

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

6. TERM LESS THAN FIVE YEARS

- 6.1 This clause only has effect where:
 - 6.1.1 the Act applies to this Lease; and
 - 6.1.2 the Term is less than five (5) years.
- 6.2 The Council and the Lessee acknowledge and agree that:
 - 6.2.1 the Term is less than five (5) years; and

6.2.2 section 20B of the Act does not apply to this Lease for the Term (including without limitation any holding over period which exceeds six (6) months).

6.3 The Lessee acknowledges that:

6.3.1 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;

6.3.2 the Lessee was not acting under coercion or undue influence in requesting or consenting to the inclusion of such provision; and

6.3.3 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.

7. RENT

7.1 Payment of Rent

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

7.2 Instalment

If a rent instalment period is less than one (1) 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.

8. RENT REVIEWS

8.1 Fixed Amount Review

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

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

Where:

R_2 is the Rent on and from the Review Date;

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

F is the rate set out in Item 6 of the Schedule in relation to that Review Date.

8.2 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).

8.3 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.

8.4 Rent Pending Determination

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

8.4.2 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.

8.5 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.

8.6 No Decrease in Rent

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

8.7 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 8.

9. RATES, TAXES AND OUTGOINGS

9.1 Liability for Rates and Taxes

9.1.1 Subject to clause 9.3, 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.

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

9.2 Payment of Outgoings

- 9.2.1 Subject to clause 9.3, 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.
- 9.2.2 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.

9.3 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 Land.

9.4 Power and Other Utilities

- 9.4.1 The Lessee will pay when they are due for payment, all costs for the use of telephone, lights and other utilities and the consumption of electricity, gas, water and any and all other services and utilities supplied to or used from the Premises.
- 9.4.2 If there is no separate meter for recording or measuring the services and utilities consumed on or from the Premises, then the Lessee may, if required by the Council, install the necessary meters at its own cost.
- 9.4.3 Without limiting the generality of this clause 9.4, the Lessee will comply in all respects with the *Electricity (General) Regulations 1997* and any other applicable electricity laws.

10. USE OF PREMISES

10.1 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:

10.1.1 residential purposes; or

10.1.2 any other use,

(without the Council's prior written consent).

10.2 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:

10.2.1 for the Council; or

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

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

10.3 Use of Facilities

- 10.3.1 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.
- 10.3.2 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.

10.4 Statutory Requirements

The Lessee, at its own cost, must comply with all Statutory Requirements (including any obligations under the *Work Health and Safety Act 2012 (SA)*) and reasonable directives of the Council relating to:

- 10.4.1 the Lessee's use and occupation of the Premises; and
- 10.4.2 the nature of the Permitted Use conducted on the Premises by the Lessee.

10.5 Alcohol and Gaming

- 10.5.1 Unless the Lessee first obtains the written consent of the Council, the Lessee must not apply for:
 - (a) a liquor licence under the *Liquor Licensing Act 1997*; or
 - (b) a gaming machine licence under the *Gaming Machines Act 1992*.
- 10.5.2 If the Lessee obtains a licence (or licences) under this clause, the Lessee must not do (or fail to do) or allow any of its employees, agents, contractors, licensees or invitees to (or fail to):
 - (a) do anything that is in breach of the *Liquor Licensing Act 1997* and/or the *Gaming Machines Act 1992* (as the case may be) or of the conditions of the relevant licence;
 - (b) do anything that may result in the relevant licence being revoked or suspended;
 - (c) assign the licence;
 - (d) apply to remove the licence;
 - (e) allow a licence to be granted to another person in respect of the Premises or any part of the Premises; or
 - (f) apply to vary or revoke any conditions of the licence.
- 10.5.3 At or before the expiry or early termination of this Lease, the Lessee must:
 - (a) give any notices the Council requires to renew or assign the licence;

- (b) allow those notices to be affixed as and for the period required by the *Liquor Licensing Act 1997* and/or the *Gaming Machines Act 1992* as the case may be;
- (c) assign the licence to the Council or the Council's nominees if required to do so by the Council; and
- (d) do anything else that may be required to affect the renewal or assignment of the licence.

10.6 Not to Damage

- 10.6.1 The Lessee must take reasonable care not to damage nor allow visitors on the Premises to damage any neighbouring property.
- 10.6.2 If the Lessee breaches this clause, then it must pay the cost of any repair work that is needed.

10.7 Repay Loans

- 10.7.1 If the Council:

- (a) has lent or advanced money to the Lessee on or before the commencement of this Lease and any part of that loan remains outstanding; or
- (b) lends money to the Lessee during the Term of this Lease; or
- (c) acts as a guarantor for any loan or advance taken out by the Lessee,

then the Lessee must repay the money so lent or advanced, together with all interest payable, in accordance with any loan agreement entered into for that purpose (**Loan Agreement**).

- 10.7.2 Any such breach or default by the Lessee under the Loan Agreement will be deemed to be a breach by the Lessee of this Lease entitling the Council to exercise any of its rights under this Lease in the event of a breach of this Lease, including without limitation, the right to terminate this Lease pursuant to clause 20 of this Lease.

10.8 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 after the Commencement Date, except a sign or signs which:

- 10.8.1 are approved by the Council; and
- 10.8.2 comply with any relevant Statutory Requirements.

10.9 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:

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

10.10 Fire Precautions

The Lessee must, at its own cost:

- 10.10.1 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
- 10.10.2 comply with all Statutory Requirements relating to fire safety and procedures including any structural works or modifications or other building works which are required as a consequence of the Lessee's particular use of the Premises.

10.11 Security

The Lessee must keep the Premises securely locked at all times when the Premises are not occupied and must provide a key to 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.

10.12 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.

11. INSURANCE

11.1 Lessee must Insure

The Lessee must keep current during the Term:

- 11.1.1 public risk insurance for at least the amount in Item 8 (or any other amount the Council reasonably requires) for each claim;
- 11.1.2 all insurance in respect of the Lessee's Equipment for its full replacement value;
- 11.1.3 plate glass insurance if requested by Council against usual risks; and
- 11.1.4 other insurances required by any Statutory Requirement or which the Council reasonably requires.

11.2 Requirements for Policies

Each policy the Lessee takes out under this clause 11 must:

- 11.2.1 be with an insurer and on terms reasonably approved by the Council;

- 11.2.2 be in the name of the Lessee and note the interest of the Council and any other person the Council requires;
- 11.2.3 cover events occurring during the policy's currency regardless of when claims are made; and
- 11.2.4 note that despite any similar policies of the Council, the Lessee's policies will be primary policies.

11.3 Evidence of Insurance

The Lessee must give the Council certificates evidencing the currency of the policies the Lessee has taken out under this clause 11. During the Term the Lessee must:

- 11.3.1 pay each premium before it is due for payment;
- 11.3.2 give the Council certificates of currency each year when the policies are renewed and at other times the Council requests;
- 11.3.3 not allow any insurance policy to lapse or vary or cancel it without the Council's consent; and
- 11.3.4 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.

11.4 Insurance Affected

- 11.4.1 The Lessee must not do anything which may:
 - (a) prejudice any insurance of the Premises or the Building; or
 - (b) increase the premium for that insurance.
- 11.4.2 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.

12. REPAIR AND MAINTENANCE

12.1 Repair

- 12.1.1 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, excluding fair wear and tear.
- 12.1.2 If the Council requires the Lessee to do so, the Lessee must promptly repair any damage to the Building or the Land caused or contributed to by the act, omission, negligence or default of the Lessee.
- 12.1.3 The respective responsibilities of the Council and the Lessee for the maintenance that is reasonably expected to be needed during the Term including planned structural maintenance, painting and

replacement or renovation works are set out in the Maintenance Schedule.

12.2 Maintain and Replace

The Lessee must maintain items in or attached to the Premises and, if damaged or worn, repair them or replace them with items of 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.

12.3 Alterations by Lessee

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

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

12.3.3 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.

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

- (a) in a proper and workmanlike manner;
- (b) in accordance with the conditions imposed by the Council and with the approvals made by Council in its capacity as lessor under this Lease;
- (c) in accordance with all Statutory Requirements; and
- (d) in a way to minimise disturbance to others.

12.3.5 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.

12.3.6 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.

12.4 Cleaning

The Lessee must use their best efforts to:

- 12.4.1 keep the Premises clean and tidy;
- 12.4.2 keep the Premises free of vermin, insects and other pests; and
- 12.4.3 not cause the Common Areas to be left untidy or in an unclean state or condition.

13. ASSIGNING, SUBLETTING AND CHARGING

13.1 Assignment

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

- 13.1.1 the proposed assignee does not change the Permitted Use;
- 13.1.2 the proposed assignee is able to meet the financial obligations under this Lease; and
- 13.1.3 the Lessee has complied with the Council's procedural requirements for obtaining the Council's consent and the Lessee has obtained the written consent of Council which may be withheld at Council's absolute discretion.

13.2 Subletting

The Lessee must not sublet or sublicense any part of the Premises without the written consent of the Council.

13.3 Charging

- 13.3.1 The Lessee must not charge the Lessee's interest in this Lease or the Lessee's Equipment without the written consent of the Council.
- 13.3.2 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.

13.4 Hiring out of Premises

The Lessee may hire out or otherwise part with possession of the Premises without the Council's consent on a short term or seasonal basis for purposes consistent with the Permitted Use to other users (**Hirers**).

13.5 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 with the Premises, including in considering whether or not to grant any consent to a request by the Lessee under this clause 13.

14. LESSEE GOVERNANCE

- 14.1 On or before the Commencement Date, if requested, 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.
- 14.2 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.

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

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

- (a) carry out any works on the Land or in or to the Building (including alterations and redevelopment), if the Council takes reasonable steps (except in emergencies) to minimise interference with the Lessee's use;
- (b) exclude or remove any person from the Land;
- (c) restrict access to the Land including parking areas if the Council takes reasonable steps (except in emergencies) to minimise interference with the Lessee's use;
- (d) install and use public address and emergency systems throughout the Land (including the Premises);
- (e) change the direction or flow of pedestrian or vehicular traffic into, out of or through the Land;
- (f) close the Building in an emergency;
- (g) use, maintain, repair, alter or add to Building Services to or in the Premises, if the Council takes reasonable steps (except in emergencies) to minimise interference with the Lessee's use;
- (h) to see the state of repair of the Premises;
- (i) 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;
- (j) to carry out and observe the Council's maintenance and repair obligations as set out in the Maintenance Schedule; and
- (k) to show prospective lessees through the Premises,

and the Lessee is not permitted to make any claim or abate any payment or terminate this Lease if the Council exercises any of its rights under this clause 15.2.

15.2.2 If the Council finds that any part of the Premises or the Building needs maintenance or repair and such maintenance or repair is the responsibility of the Lessee under this Lease, then the Council may notify the Lessee.

- 15.2.3 If the Lessee has not carried out the work required by the notice to a standard reasonably acceptable to the Council within the time set out in the notice (which will not be less than fourteen (14) days except in the case of an emergency) then the Council may come onto the Premises at a reasonable hour to carry out the maintenance or repair. The cost of the maintenance or repair will be recovered from the Lessee.

15.3 Emergencies

In an emergency the Council may:

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

15.4 Works and Restrictions

15.4.1 The Council may:

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

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

15.5 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.

16. DAMAGE OR DESTRUCTION

16.1 Termination for Destruction or Damage

16.1.1 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:

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

16.1.2 If the Council gives a notice under clause 16.1.1(b) 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 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).

- 16.1.3 If the Council does not comply with clause 16.1.1 or with the Lessee's notice under clause 16.1.2, the Lessee may end this Lease by giving the Council not less than one (1) month's notice.

16.2 Reduction or Abatement of Rent

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

- (a) the Premises are unfit or inaccessible; or
- (b) 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) will depend 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, ASSET RATIONALISATION AND DEMOLITION

- 17.1 If as part of any redevelopment, asset rationalisation 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 will be entitled to terminate this Lease subject to the following provisions:

- 17.1.1 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;

- 17.1.2 the Council may at any time after providing the Lessee with the information specified in clause 17.1.1, 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 six (6) months after the Termination Notice is given. This Lease will, unless terminated earlier by the Lessee under clause 17.1.3, come to an end at midnight on the day specified in the Termination Notice;

- 17.1.3 at any time after receiving a Termination Notice under clause 17.1.1, the Lessee may terminate this Lease by giving not less than seven (7) days' written notice to the Council; and

- 17.1.4 when this Lease is terminated (whether by the Council under clause 17.1.2 or by the Lessee under clause 17.1.3), 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.

- 17.2 Council may 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 17.

18. RENEWAL

If the Lessee seeks to exercise the option to renew then the Lessee must serve a written notice on the Council not less than three (3) months and not more than six (6) months before the expiry of the Initial Term stating it wishes to renew this Lease for the period specified in Item 6 of the Schedule. If such notice is given, the Council may or may not at its absolute discretion renew this Lease on the terms in this Lease (except this sub-clause) commencing immediately after the Initial Term expires.

19. RIGHTS AND OBLIGATIONS ON EXPIRY

19.1 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.

19.2 Handover of Possession

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

- 19.2.1 remove all of the Lessee's Equipment and repair any damage caused by such removal;
- 19.2.2 if required by the Council, remove and reinstate any alterations or additions made to the Premises by the Lessee;
- 19.2.3 leave the Premises in a clean, tidy and safe condition; and
- 19.2.4 complete any repairs which the Lessee is obliged to carry out under this Lease.

19.3 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.

19.4 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:

- 19.4.1 either party may terminate on one (1) month's notice given at any time; and
- 19.4.2 is on the same terms as this Lease.

20. BREACH

20.1 Payment Obligations

20.1.1 The Lessee must make payments due under this Lease:

- (a) without demand (unless this Lease provides demand must be made);
- (b) without set off, counterclaim, withholding or deduction;
- (c) to the Council or as the Council directs; and
- (d) by direct debit or such other means as directed by the Council.

20.1.2 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.

20.2 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.

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:

- (a) in an emergency; or
- (b) 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 within fourteen (14) days or after receiving notice requiring it to do so.

20.3.2 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.

20.4 Default, Breach and Re-Entry

In the event that:

20.4.1 any moneys (or part of any moneys) payable under this Lease are unpaid for the space of seven (7) days after any day on which the same ought to have been paid (although no formal or legal demand has been made);

20.4.2 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 this Lease and fails to remedy

the breach within fourteen (14) days after receiving notice requiring it to do so;

20.4.3 in the case of a Lessee being a company or association:

- (a) 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;
- (b) any person appoints an administrator of the Lessee;
- (c) an application is made to any court to wind up the Lessee;
- (d) an application is made pursuant to section 411 of the *Corporations Act 2001*;
- (e) a Controller, Managing Controller, Receiver or Receiver and Manager is appointed to the Lessee or in respect of any property of the Lessee; or
- (f) the Lessee is deregistered or dissolved;

20.4.4 in the case of a Lessee being a natural person:

- (a) the Lessee commits an act of bankruptcy or a sequestration order is made against the Lessee;
- (b) a creditor of the Lessee presents a creditor's petition against the Lessee under the *Bankruptcy Act 1966*;
- (c) the Lessee presents a petition against himself or herself under the *Bankruptcy Act 1966*;
- (d) the Lessee signs an authority under section 188 of the *Bankruptcy Act 1966*;
- (e) 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;
- (f) 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
- (g) the Lessee is convicted of an indictable offence (other than a traffic offence);

20.4.5 execution is levied against the Lessee and not discharged within thirty (30) days;

20.4.6 any property in or on the Premises is seized or taken in execution under any judgment or proceedings;

20.4.7 the Premises are left unoccupied for one (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 this Lease.

20.5 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 20.

20.6 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 fourteen (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.

20.7 Repudiation and Damages

20.7.1 The Lessee acknowledges that the following obligations under this Lease are essential terms:

- (a) the obligation to pay Rent;
- (b) the obligation to pay Outgoings;
- (c) the obligations and prohibitions in relation to use of the Premises;
- (d) the obligations and restrictions in relation to additions and alterations to the Premises; and
- (e) the restriction on assignment, subletting, mortgaging and licensing.

20.7.2 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.

20.7.3 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.

20.7.4 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.

- 20.7.5 The rights of the Council under this clause 20.7 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.

20.8 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.

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 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:

- 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 Building 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 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:
- 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 a percentage amount which is equal to the GST Rate; and
 - 22.1.3 the Lessee shall 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 to be increased to account for GST under this clause 22, the Council shall, on or before the date on which the Agreed Consideration is payable, issue a tax invoice to the Lessee.
- 22.3 If the Lessee does not comply with its obligations under this Lease or with its obligations under the GST Legislation in connection with this 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.

23. GENERAL

23.1 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.

23.2 Costs

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

23.3 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.

23.4 Exercise of Power

- 23.4.1 The failure, delay, relaxation or indulgence by a party in exercising a power or right under this Licence is not a waiver of that power or right.
- 23.4.2 An exercise of a power or right under this Licence does not preclude a further exercise of it or the exercise of another right or power.

23.5 Notice

- 23.5.1 A notice, demand, consent, approval or communication under this Licence (**Notice**) must be in writing, in English and signed by a person authorised by the sender.
- 23.5.2 Without excluding any other form of service, any Notice required to be given or served will be sufficiently given or served as follows:
- (a) 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;
 - (b) in the case of 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).
- 23.5.3 Notice served by pre-paid post will be deemed to have been given or served seven (7) Business Days after posting.
- 23.5.4 If two or more people comprise a party, notice to one is effective Notice to all.

23.6 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.

23.7 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 and the disclosure statement, were made or given or relied upon.

23.8 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 three (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

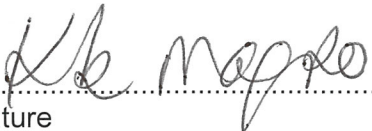
LESSOR

EXECUTED as an Agreement


EXECUTED as an Agreement

LESSOR

SIGNED AS DELEGATE FOR)
CORPORATION OF THE TOWN OF WALKERVILLE)
under section 44 of the *Local Government Act 1999*:)


.....
Signature


.....
Print full name



.....
Print Position Held

LESSEE

SIGNED AS DELEGATE FOR)
WALKERVILLE BOWLING CLUB INCORPORATED)
in accordance with its Constitution and in the presence)
of:)


.....
Signature

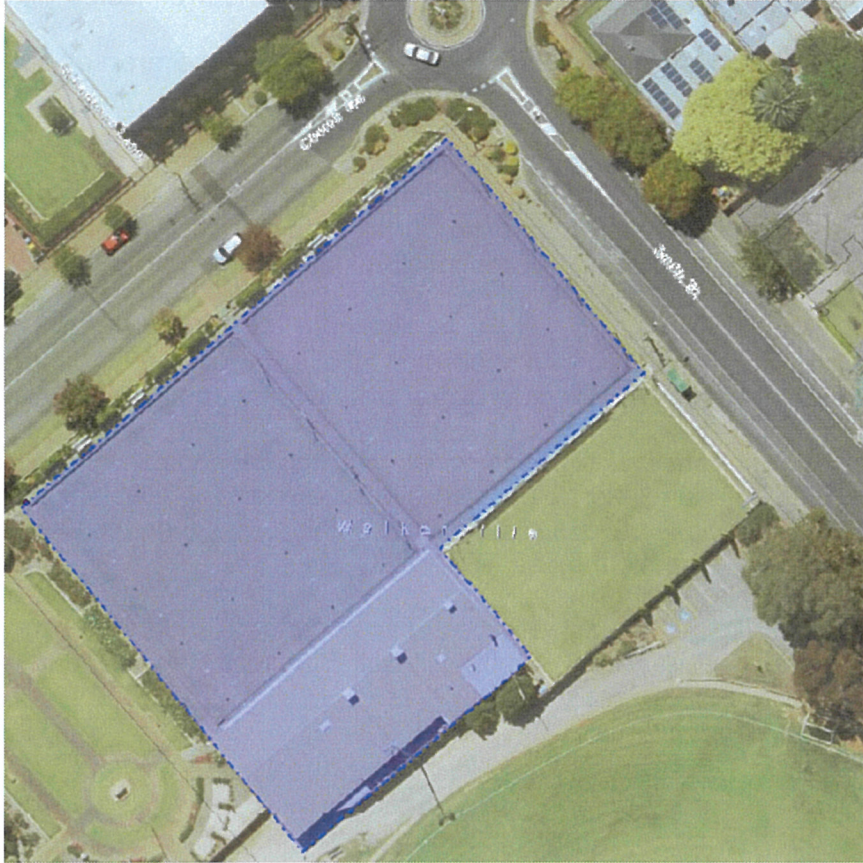

.....
Print full name


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Print Position Held

PLAN

#Council to insert#

PLAN



SPECIAL CONDITIONS

1. In relation to the maintenance of the bowling surfaces and fixtures associated with the use of the bowling surfaces (**Bowling Surfaces**) (if any) on the Premises:
 - 1.1. the respective obligations of the Council and the Lessee are set out in the Maintenance Schedule; and
 - 1.2. the Council may set maintenance standards with respect to the Bowling Surfaces and may amend or update the maintenance standards at any time. If the Lessee is responsible for carrying out any maintenance under this clause the Lessee must comply with any reasonable maintenance standards set by the Council.
2. The Lessee will provide to the Council a duplicate key of all locks that are or may in the future be placed on any gates, doors or fences surrounding or upon the Premises.
3. The Lessee must at all times act in accordance with the reasonable directions and instructions of the Council in relation to each and every term and condition of this Lease and if the Lessee fails to observe its obligations under this Lease then the Council may terminate this Lease by notice to the Lessee.
4. The Lessee must keep all rubbish, bottles, cans, cartons and refuse in proper containers and shall in all respects comply with all Statutory Requirements and all reasonable directions of the Council.

ANNEXURE B

MAINTENANCE SCHEDULE

This schedule outlines the particular responsibilities of Council and the Lessee, where applicable, and must be read in conjunction with relevant provisions within this Lease.

1. Building External

Item	Lessee	Council
Stormwater system	<ul style="list-style-type: none"> Clean gutters, downpipes and stormwater drains – keep free of debris to prevent blockages 	<ul style="list-style-type: none"> Repair/replace as required (based on Council's capital works program and budget priorities) unless damage caused by Lessee's negligence
Windows	<ul style="list-style-type: none"> Clean glazing Replace damaged windows, panels or glazing 	<ul style="list-style-type: none"> Repair/replace frames and opening/closing mechanisms unless damage caused by Lessee's negligence
Roof and guttering	<ul style="list-style-type: none"> Keep guttering clean and free of debris at all times 	<ul style="list-style-type: none"> Repair leaks to the roof and repair or replace roof covering
Doors/locking mechanisms	<ul style="list-style-type: none"> Key replacement Keep doors operational – repair (eg if door hinge/lock broken, repair/replace locks, door coverings) Replace damaged locks Replacement of damaged doors 	<ul style="list-style-type: none"> Replace at end of natural life
Walls	<ul style="list-style-type: none"> Wash, clean periodically Minor repairs and repainting periodically Remove graffiti 	<ul style="list-style-type: none"> Maintain structural stability
Stairwells/staircase	<ul style="list-style-type: none"> Keep free from rubbish and debris Keep access/egress area clear Repair/replace as required including balustrades, treads, risers and landings 	<ul style="list-style-type: none"> Nil responsibility
Paint finishes	<ul style="list-style-type: none"> Touch up where damaged Repaint as required 	<ul style="list-style-type: none"> Nil responsibility
Retaining walls	<ul style="list-style-type: none"> Not applicable 	<ul style="list-style-type: none"> Not applicable
Signs	<ul style="list-style-type: none"> Maintain/replace (observing Council's requirements for installation of signage) 	<ul style="list-style-type: none"> Nil responsibility
Security lights	<ul style="list-style-type: none"> Replace globes, maintain/replace 	<ul style="list-style-type: none"> Nil responsibility

External pipes	<ul style="list-style-type: none"> Remove blockages and repair damage 	<ul style="list-style-type: none"> Replace at end of natural life Remove tree roots if damage caused by trees on Council reserves
General cleaning	<ul style="list-style-type: none"> Full responsibility 	<ul style="list-style-type: none"> Nil responsibility

2. Building Internal

Item	Lessee	Council
Water, sewer and gas piping	<ul style="list-style-type: none"> Keep free from blockages – unblock drains Repair damage 	<ul style="list-style-type: none"> Replace at end of useful life
Hot water system	<ul style="list-style-type: none"> Full responsibility 	<ul style="list-style-type: none"> Nil responsibility
Fire extinguishers and exit lights	<ul style="list-style-type: none"> Install and maintain in accordance with the Building Code of Australia 	<ul style="list-style-type: none"> Nil responsibility
Water/waste services – associated fittings	<ul style="list-style-type: none"> Clean fittings, eg taps, toilets, sinks – replace washers 	<ul style="list-style-type: none"> Nil responsibility
Grease arrestors	<ul style="list-style-type: none"> Full responsibility 	<ul style="list-style-type: none"> Nil responsibility
Telecommunications – phone/PABX systems	<ul style="list-style-type: none"> Full responsibility 	<ul style="list-style-type: none"> Nil responsibility
Air-conditioning units/thermostats, ducting etc (installed by Council)	<ul style="list-style-type: none"> Maintenance and repair including all testing and servicing 	<ul style="list-style-type: none"> Repair and replace as required (based on Council's capital works program and budget priorities unless urgent or a safety hazard)
Air-conditioning units/thermostats, ducting etc (installed by the Lessee)	<ul style="list-style-type: none"> Maintenance and repair including all testing and servicing Full responsibility for repair and replacement 	<ul style="list-style-type: none"> Nil responsibility
Electrical services, switchboards, distribution boards and power lighting circuits	<ul style="list-style-type: none"> Limited or minor responsibility for repair and replacement 	<ul style="list-style-type: none"> Major or significant repairs or replacement
Lighting fixtures	<ul style="list-style-type: none"> Replace lights and globes, ballasts and fuses Repair/replace wiring connections 	<ul style="list-style-type: none"> Nil responsibility
Smoke detectors	<ul style="list-style-type: none"> Full responsibility 	<ul style="list-style-type: none"> Nil responsibility
Carpets	<ul style="list-style-type: none"> Clean – remove all stains Repair/replace to appropriate finish 	<ul style="list-style-type: none"> Nil responsibility
Vinyl/concrete/tiled/other floors	<ul style="list-style-type: none"> Clean/polish Repair/replace to appropriate finish 	<ul style="list-style-type: none"> Nil responsibility
Internal walls/screens	<ul style="list-style-type: none"> Clean, keep free of mould/grime 	<ul style="list-style-type: none"> Replacement responsibility for structural walls only

	<ul style="list-style-type: none"> • Repair damage caused by use • Repair cracking, replace, repaint 	
Ceilings	<ul style="list-style-type: none"> • Clean, keep free from cobwebs, etc • Minor repairs/repainting periodically 	<ul style="list-style-type: none"> • Replace due to structural failure or repair damage caused by roof leaks
Stairwells, staircases	<ul style="list-style-type: none"> • Clean, keep free from cobwebs, debris, etc • Repair/replace, eg balustrades, treads, risers and landings 	<ul style="list-style-type: none"> • Replace due to structural failure
Loose furniture	<ul style="list-style-type: none"> • Full maintenance responsibility 	<ul style="list-style-type: none"> • Nil responsibility
Replacement of lights and globes	<ul style="list-style-type: none"> • Full maintenance responsibility 	<ul style="list-style-type: none"> • Nil responsibility
Electrical tagging and testing	<ul style="list-style-type: none"> • Full responsibility 	<ul style="list-style-type: none"> • Nil responsibility
General cleaning	<ul style="list-style-type: none"> • Full responsibility 	<ul style="list-style-type: none"> • Nil responsibility
Security alarms (maintenance and call-outs)	<ul style="list-style-type: none"> • Full maintenance responsibility 	<ul style="list-style-type: none"> • Nil responsibility

3. External Surfaces

Item	Lessee	Council
Linemarking of ovals / playing fields / surfaces	<ul style="list-style-type: none"> • Full responsibility 	<ul style="list-style-type: none"> • Nil responsibility
Mowing of ovals / playing fields / surfaces	<ul style="list-style-type: none"> • Full responsibility 	<ul style="list-style-type: none"> • Nil responsibility
Aerating of ovals / playing fields / surfaces	<ul style="list-style-type: none"> • Full responsibility 	<ul style="list-style-type: none"> • Nil responsibility
Fertilising of ovals / playing fields / surfaces	<ul style="list-style-type: none"> • Full responsibility 	<ul style="list-style-type: none"> • Nil responsibility
Topdressing of ovals / playing fields / surfaces	<ul style="list-style-type: none"> • Full responsibility 	<ul style="list-style-type: none"> • Nil responsibility
Weed / pest spraying of ovals / playing fields / surfaces	<ul style="list-style-type: none"> • Full responsibility 	<ul style="list-style-type: none"> • Nil responsibility
Watering of ovals / playing fields / surfaces	<ul style="list-style-type: none"> • Full responsibility 	<ul style="list-style-type: none"> • Nil responsibility
Irrigation system	<ul style="list-style-type: none"> • Management of system 	<ul style="list-style-type: none"> • Maintenance of system
External fences and gates	<ul style="list-style-type: none"> • Nil responsibility 	<ul style="list-style-type: none"> • Schedule upgrades and replacement (based on capital works program and budget priorities)
Car park surfaces	<ul style="list-style-type: none"> • Not applicable 	<ul style="list-style-type: none"> • Not applicable
Car park line marking	<ul style="list-style-type: none"> • Not applicable 	<ul style="list-style-type: none"> • Not applicable
Garden areas	<ul style="list-style-type: none"> • Keep clean and unobstructed • Keep maintained 	<ul style="list-style-type: none"> • Nil responsibility

Storage shed	<ul style="list-style-type: none"> • Maintain and repair in good repair and watertight condition 	<ul style="list-style-type: none"> • Nil responsibility
Entrance feature	<ul style="list-style-type: none"> • Not applicable 	<ul style="list-style-type: none"> • Not applicable
Internal roads	<ul style="list-style-type: none"> • Not applicable 	<ul style="list-style-type: none"> • Not applicable
Internal roads line marking	<ul style="list-style-type: none"> • Not applicable 	<ul style="list-style-type: none"> • Not applicable
Lighting of ovals / playing fields	<ul style="list-style-type: none"> • Not applicable 	<ul style="list-style-type: none"> • Not applicable
Lighting of road areas and car park (outside leased area)	<ul style="list-style-type: none"> • Nil responsibility 	<ul style="list-style-type: none"> • Full responsibility
Pathways	<ul style="list-style-type: none"> • 	<ul style="list-style-type: none"> •

LEASE AGREEMENT LEASE OF COMMUNITY BUILDING & LAND

24 SMITH STREET
WALKERVILLE SA 5081

Prepared for

Walkerville Bowling & Community Club Incorporated

ABN 16 853 237 152

(Lessee)

Prepared by

The Corporation of The Town of Walkerville

ABN 49 190 949 882

(Lessor)

Town of Walkerville

P 08 8342 7100 | F 08 8269 7820

66 Walkerville Terrace, Gilberton SA 5081 | Postal PO Box 55, Walkerville SA 5081

walkerville@walkerville.sa.gov.au | www.walkerville.sa.gov.au

SCHEDULE OF AGREEMENT

ITEM 1	RENEWAL COMMENCEMENT
---------------	-----------------------------

Commencement of term as of 1 November 2019

ITEM 2	PREMISES
---------------	-----------------

That portion of the land comprised in Certificate of Title Volume 5255 Foilo 827

ITEM 3	LEASE
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That portion of the land comprised in Certificate of Title Volume 5255 Foilo 827 outlined in red on the plan annexed to the Lease

ITEM 4	RENEWAL TERM
---------------	---------------------

Five (5) years commencing on 1 November 2019 & expiring at midnight on 31 October 2024, inclusive of one (1) formal right of renewal 31 October 2020

ITEM 5	RENT PAYABLE
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Lease fee payable of \$1,527.00 per annum (exclusive of GST) subject to review & annual CPI review & increase pursuant to clause 6 of the Schedule

ITEM 6	REVIEW METHOD
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The Rent due under this Lease for the Renewal Terms shall be increased effective on the first day of any Renewal Term & every Twelve (12) months thereafter by an amount as dictated by the Australian Bureau of Statistics CPI table. Review due to occur 31 October 2019

ITEM 7	PERMITTED USE
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Permitted activities comprising of, but not limited to, the promotion of recreational and competitive bowls and ancillary activities, inclusive of all those consistent with the objectives of the Lessee. Permitted use of premises inclusive of the hire of the facilities and grounds at the discretion and liability of the Lessee

ITEM 8	INSURANCE
---------------	------------------

Twenty million dollars (\$20,000,000.00) Public Indemnity Insurance to be held by the Lessee throughout the duration of the term. Copies of Certificate of Currency must be issued to all parties within fourteen (14) days of execution of this agreement.

ITEM 9	SPECIAL CONDITIONS
---------------	---------------------------

The terms and conditions (if any) set out in Annexure A, are deemed to be incorporated into this Lease and, in the event of any inconsistency with the terms and conditions contained in the body of this Lease, then the Special Conditions will prevail.

THIS LEASE is dated 31 October 2018

BETWEEN

CORPORATION OF THE TOWN OF WALKERVILLE ABN 49 190 949 882 of 66 Walkerville Terrace, Gilberton SA 5081 (**Council**)

AND

WALKERVILLE BOWLING CLUB INCORPORATED ABN 16 853 237 152 trading as Walkerville Bowling and Community Club of c/- PO Box 57, Walkerville SA 5081 (**Lessee**)

INTRODUCTION

- (a) The Council is the registered proprietor 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.

TERMS

1. Acknowledgement of Introduction

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

2. Dictionary

In this Lease:

Act	means the <i>Retail and Commercial Leases Act 1995</i> .
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 25).
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, 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 South Australia.
Commencement Date	means the commencement date of the Initial Term described in Item 1 of the Schedule.
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 8.3.
Current CPI	means for a CPI Review Date, the CPI number for the quarter ending immediately before that Review Date.
Default Rate	means the rate which is 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 One Hundred Thousand Dollars (\$100,000.00) and if there is more than one rate published, the highest of those rates.
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 <i>A New Tax System (Goods and Services Tax) Act 1999</i> (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.
Land	means the land described in Item 2 of the Schedule.
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, Hirers and other invitees of the Lessee.

Lessee's Equipment	means any and all fixtures and fittings and other equipment installed in or brought onto 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 area of the Land 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 described in Annexure B.
Outgoings	<p>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 and includes:</p> <p>the cost of insuring the Building including all improvements and Building Services;</p> <p>the amount of any excess or deductible not paid or excluded under any insurance policy taken out by the Council;</p> <p>all costs (including wages and other usual employment on-costs) of the management, control and administration of the Land or Building;</p> <p>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 Areas or elsewhere in the Building that are provided from time to time;</p> <p>all costs of the Council in connection with the maintenance, repair, replacement and renovation of the Building from time to time;</p> <p>all costs of the Council in connection with the cleaning, lighting, heating and air-conditioning of 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;</p> <p>all costs of the Council in relation to establishing, maintaining, repairing and replacing common signs, notices and directory boards within the Building; and</p> <p>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).</p>
Payment Date	means the Commencement Date and the first day of each month during the Term.
Permitted Use	means the use described in Item 7 of the Schedule.
Premises	means the premises described in Item 2 of the Schedule 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).
Rent	means the amount described in Item 5 of the Schedule.
Review Date	means frequency as described in Item 6 of the Schedule.
Review Method	means the relevant method of rent review in Item 6 of the Schedule for any Review Date.
Special Conditions	means the special conditions to this Lease describe in Annexure A.
Statutory Authorities	means any authorities created by or under any relevant Legislation including the Council in its separate capacity as such an Authority.
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 of this Lease commencing on the Commencement Date described in Item 4 of the Schedule 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: who is appointed by agreement of the Council and the Lessee or, failing agreement within fourteen (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 President or Acting President of the Institute; who has practised as a valuer with a minimum of five (5) years relevant experience; who is licensed to practice as a valuer of the kind of premises in respect of which the review is required; and 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.

3. Interpretation

In this Lease, unless the contrary intention appears:

- 3.1 a reference to this Lease is a reference to this document;
- 3.2 words beginning with capital letters are defined in clause 2;
- 3.3 a reference to a clause is a reference to a clause in this Lease;
- 3.4 a reference to an Item is a reference to an item in the Schedule;
- 3.5 a reference to the Schedule is a reference to the schedule of this Lease;
- 3.6 a reference to an Annexure is a reference to an annexure to this Lease;

- 3.7 headings are for convenience only and do not affect interpretation;
- 3.8 the singular includes the plural and vice versa;
- 3.9 a reference to an individual or person includes a corporation, partnership, joint venture, authority, trust, state or government and vice versa;
- 3.10 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;
- 3.11 a reference to any document (including this Lease) is to that document as varied, novated, ratified or replaced from time to time;
- 3.12 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;
- 3.13 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;
- 3.14 'including' and similar expressions are not and must not be treated as words of limitation;
- 3.15 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
- 3.16 any Special Condition in Annexure A 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.

4. Retail & Commercial Leases Act

- 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.
- 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) shall be unenforceable or void but only to the extent that it is expressly made unenforceable or void by the Act.

5. Grant Of Lease

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

6. Term Less Than Five Years

- 6.1 This clause only has effect where:
 - 6.1.1 the Act applies to this Lease; and
 - 6.1.2 the Term is less than five (5) years.
- 6.2 The Council and the Lessee acknowledge and agree that:
 - 6.2.1 the Term is less than five (5) years; and
 - 6.2.2 section 20B of the Act does not apply to this Lease for the Term (including without limitation any holding over period which exceeds six (6) months).

6.3 The Lessee acknowledges that:

- 6.3.1 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;
- 6.3.2 the Lessee was not acting under coercion or undue influence in requesting or consenting to the inclusion of such provision; and
- 6.3.3 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.

7. Rent

7.1 Payment of Rent

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

7.2 Instalment

If a rent instalment period is less than one (1) 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.

8. Rent Reviews

8.1 Fixed Amount Review

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

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

Where:

R_2 is the Rent on and from the Review Date;

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

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

8.2 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).

8.3 **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.

8.4 **Rent Pending Determination**

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

8.4.2 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.

8.5 **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.

8.6 **No Decrease in Rent**

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

8.7 **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 8.

9. **Rates, Taxes & Outgoings**

9.1 **Liability for Rates and Taxes**

9.1.1 Subject to clause 9.3, 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.

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

9.2 **Payment of Outgoings**

9.2.1 Subject to clause 9.3, 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.

9.2.2 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.

9.3 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 Land.

9.4 Power and Other Utilities

9.4.1 The Lessee will pay when they are due for payment, all costs for the use of telephone, lights and other utilities and the consumption of electricity, gas, water and any and all other services and utilities supplied to or used from the Premises.

9.4.2 If there is no separate meter for recording or measuring the services and utilities consumed on or from the Premises, then the Lessee may, if required by the Council, install the necessary meters at its own cost.

9.4.3 Without limiting the generality of this clause 9.4, the Lessee will comply in all respects with the *Electricity (General) Regulations 1997* and any other applicable electricity laws.

10. Use of Premises

10.1 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:

10.1.1 residential purposes; or

10.1.2 any other use, (without the Council's prior written consent).

10.2 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:

10.2.1 for the Council; or

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

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

10.3 Use of Facilities

10.3.1 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.

10.3.2 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.

10.4 Statutory Requirements

The Lessee, at its own cost, must comply with all Statutory Requirements (including any obligations under the *Work Health and Safety Act 2012 (SA)*) and reasonable directives of the Council relating to:

- 10.4.1 the Lessee's use and occupation of the Premises; and
- 10.4.2 the nature of the Permitted Use conducted on the Premises by the Lessee.

10.5 **Alcohol and Gaming**

- 10.5.1 Unless the Lessee first obtains the written consent of the Council, the Lessee must not apply for:
 - (a) a liquor licence under the *Liquor Licensing Act 1997*; or
 - (b) a gaming machine licence under the *Gaming Machines Act 1992*.
- 10.5.2 If the Lessee obtains a licence (or licences) under this clause, the Lessee must not do (or fail to do) or allow any of its employees, agents, contractors, licensees or invitees to (or fail to):
 - (a) do anything that is in breach of the *Liquor Licensing Act 1997* and/or the *Gaming Machines Act 1992* (as the case may be) or of the conditions of the relevant licence;
 - (b) do anything that may result in the relevant licence being revoked or suspended;
 - (c) assign the licence;
 - (d) apply to remove the licence;
 - (e) allow a licence to be granted to another person in respect of the Premises or any part of the Premises; or
 - (f) apply to vary or revoke any conditions of the licence.
- 10.5.3 At or before the expiry or early termination of this Lease, the Lessee must:
 - (a) give any notices the Council requires to renew or assign the licence;
 - (b) allow those notices to be affixed as and for the period required by the *Liquor Licensing Act 1997* and/or the *Gaming Machines Act 1992* as the case may be;
 - (c) assign the licence to the Council or the Council's nominees if required to do so by the Council; and
 - (d) do anything else that may be required to affect the renewal or assignment of the licence.

10.6 **Not to Damage**

- 10.6.1 The Lessee must take reasonable care not to damage nor allow visitors on the Premises to damage any neighbouring property.
- 10.6.2 If the Lessee breaches this clause, then it must pay the cost of any repair work that is needed.

10.7 **Repay Loans**

10.7.1 If the Council:

- (a) has lent or advanced money to the Lessee on or before the commencement of this Lease and any part of that loan remains outstanding; or
- (b) lends money to the Lessee during the Term of this Lease; or
- (c) acts as a guarantor for any loan or advance taken out by the Lessee, then the Lessee must repay the money so lent or advanced, together with all interest payable, in accordance with any loan agreement entered into for that purpose (Loan Agreement).

10.7.2 Any such breach or default by the Lessee under the Loan Agreement will be deemed to be a breach by the Lessee of this Lease entitling the Council to exercise any of its rights under this Lease in the event of a breach of this Lease, including without limitation, the right to terminate this Lease pursuant to clause 21 of this Lease.

10.8 **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 after the Commencement Date, except a sign or signs which:

- 10.8.1 are approved by the Council; and
- 10.8.2 comply with any relevant Statutory Requirements.

10.9 **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:

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

10.10 **Fire Precautions**

The Lessee must, at its own cost:

- 10.10.1 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
- 10.10.2 comply with all Statutory Requirements relating to fire safety and procedures including any structural works or modifications or other building works which are required as a consequence of the Lessee's particular use of the Premises.

10.11 Security

The Lessee must keep the Premises securely locked at all times when the Premises are not occupied and must provide a key to 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.

10.12 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.

11. Insurance**11.1 Lessee must Insure**

The Lessee must keep current during the Term:

- 11.1.1 public risk insurance for at least the amount in Item 5 of the Schedule or any other amount the Council reasonably requires) for each claim;
- 11.1.2 all insurance in respect of the Lessee's Equipment for its full replacement value;
- 11.1.3 plate glass insurance if requested by Council against usual risks; and
- 11.1.4 other insurances required by any Statutory Requirement or which the Council reasonably requires.

11.2 Requirements for Policies

Each policy the Lessee takes out under this clause 11 must:

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

11.3 Evidence of Insurance

The Lessee must give the Council certificates evidencing the currency of the policies the Lessee has taken out under this clause 11. During the Term the Lessee must:

- 11.3.1 pay each premium before it is due for payment;
- 11.3.2 give the Council certificates of currency each year when the policies are renewed and at other times the Council requests;
- 11.3.3 not allow any insurance policy to lapse or vary or cancel it without the Council's consent; and
- 11.3.4 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.

11.4 Insurance Affected

- 11.4.1 The Lessee must not do anything which may:
- (a) prejudice any insurance of the Premises or the Building; or
 - (b) increase the premium for that insurance.
- 11.4.2 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.

12. Repairs & Maintenance

12.1 Repair

- 12.1.1 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, excluding fair wear and tear.
- 12.1.2 If the Council requires the Lessee to do so, the Lessee must promptly repair any damage to the Building or the Land caused or contributed to by the act, omission, negligence or default of the Lessee.
- 12.1.3 The respective responsibilities of the Council and the Lessee for the maintenance that is reasonably expected to be needed during the Term including planned structural maintenance, painting and replacement or renovation works are set out in the Maintenance Schedule.

12.2 Maintain and Replace

The Lessee must maintain items in or attached to the Premises and, if damaged or worn, repair them or replace them with items of 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.

12.3 Alterations by Lessee

- 12.3.1 The Lessee must not carry out any alterations or additions to the Premises without Council's consent.
- 12.3.2 The Lessee must provide full details of the proposed alteration and additions to the Council.
- 12.3.3 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.
- 12.3.4 The Lessee must carry out any approved alterations and additions:
- (a) in a proper and workmanlike manner;
 - (b) in accordance with the conditions imposed by the Council and with the approvals made by Council in its capacity as lessor under this Lease;
 - (c) in accordance with all Statutory Requirements; and

(d) in a way to minimise disturbance to others.

12.3.5 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.

12.3.6 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.

12.4 **Cleaning**

The Lessee must use their best efforts to:

12.4.1 keep the Premises clean and tidy;

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

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

13. **Assigning, Subletting & Charging**

13.1 **Assignment**

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

13.1.1 the proposed assignee does not change the Permitted Use;

13.1.2 the proposed assignee is able to meet the financial obligations under this Lease; and

13.1.3 the Lessee has complied with the Council's procedural requirements for obtaining the Council's consent and the Lessee has obtained the written consent of Council which may be withheld at Council's absolute discretion.

13.2 **Subletting**

The Lessee must not sublet or sublicense any part of the Premises without the written consent of the Council.

13.3 **Charging**

13.3.1 The Lessee must not charge the Lessee's interest in this Lease or the Lessee's Equipment without the written consent of the Council.

13.3.2 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.

13.4 **Hiring out of Premises**

The Lessee may hire out or otherwise part with possession of the Premises without the Council's consent on a short term or seasonal basis for purposes consistent with the Permitted Use to other users (**Hirers**).

13.5 **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 with the Premises, including in considering whether or not to grant any consent to a request by the Lessee under this clause 13.

14. **Lessee Governance**

- 14.1 On or before the Commencement Date, if requested, 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.
- 14.2 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.

15. **Council's Obligations & 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**

- 15.2.1 The Council may (except in the case of emergency when no notice will be required) enter the Premises after giving the Lessee reasonable notice:
 - (a) carry out any works on the Land or in or to the Building (including alterations and redevelopment), if the Council takes reasonable steps (except in emergencies) to minimise interference with the Lessee's use;
 - (b) exclude or remove any person from the Land;
 - (c) restrict access to the Land including parking areas if the Council takes reasonable steps (except in emergencies) to minimise interference with the Lessee's use;
 - (d) install and use public address and emergency systems throughout the Land (including the Premises);
 - (e) change the direction or flow of pedestrian or vehicular traffic into, out of or through the Land;
 - (f) close the Building in an emergency;
 - (g) use, maintain, repair, alter or add to Building Services to or in the Premises, if the Council takes reasonable steps (except in emergencies) to minimise interference with the Lessee's use;
 - (h) to see the state of repair of the Premises;
 - (i) 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;

- (j) to carry out and observe the Council's maintenance and repair obligations as set out in the Maintenance Schedule; and
- (k) to show prospective lessees through the Premises,

and the Lessee is not permitted to make any claim or abate any payment or terminate this Lease if the Council exercises any of its rights under this clause 15.2.

15.2.2 If the Council finds that any part of the Premises or the Building needs maintenance or repair and such maintenance or repair is the responsibility of the Lessee under this Lease, then the Council may notify the Lessee.

15.2.3 If the Lessee has not carried out the work required by the notice to a standard reasonably acceptable to the Council within the time set out in the notice (which will not be less than fourteen (14) days except in the case of an emergency) then the Council may come onto the Premises at a reasonable hour to carry out the maintenance or repair. The cost of the maintenance or repair will be recovered from the Lessee.

15.3 **Emergencies**

In an emergency the Council may:

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

15.4 **Works and Restrictions**

15.4.1 The Council may:

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

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

15.5 **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.

16. **Damage or Destruction**

16.1 **Termination for Destruction or Damage**

16.1.1 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:

- (a) terminating this Lease (on a date at least one (1) month after the Council gives notice); or
 - (b) 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.
- 16.1.2 If the Council gives a notice under clause 16.1.1(b) 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 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).
- 16.1.3 If the Council does not comply with clause 16.1.1 or with the Lessee's notice under clause 16.1.2, the Lessee may end this Lease by giving the Council not less than one (1) month's notice.

17. Reduction or Abatement of Rent

- 17.1.1 The Yearly Amounts to be paid by the Lessee will during the period the Premises are unfit or inaccessible be reduced unless:
- (a) the Premises are unfit or inaccessible; or
 - (b) an insurer refuses to pay a claim,
- as a result of a deliberate or negligent act or omission of the Lessee.
- 17.1.2 The level of the reduction (if any) will depend on the nature and extent of the damage.
- 17.1.3 If the level of the reduction (if any) cannot be agreed it must be determined by a Valuer.

18. Redevelopment, Asset Rationalisation & Demolition

- 18.1 If as part of any redevelopment, asset rationalisation 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 will be entitled to terminate this Lease subject to the following provisions:
- 18.1.1 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;
 - 18.1.2 the Council may at any time after providing the Lessee with the information specified in clause 18.1.1, 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 six (6) months after the Termination Notice is given. This Lease will, unless terminated earlier by the Lessee under clause 18.1.3, come to an end at midnight on the day specified in the Termination Notice;
 - 18.1.3 at any time after receiving a Termination Notice under clause 18.1.1, the Lessee may terminate this Lease by giving not less than seven (7) days' written notice to the Council; and

18.1.4 when this Lease is terminated (whether by the Council under clause 18.1.2 or by the Lessee under clause 18.1.3), 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.

18.2 Council may 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 18.

19. Renewal

If the Lessee seeks to exercise the option to renew then the Lessee must serve a written notice on the Council not less than three (3) months and not more than six (6) months before the expiry of the Initial Term stating it wishes to renew this Lease for the period specified in Item 4 of the Schedule. If such notice is given, the Council may or may not at its absolute discretion renew this Lease on the terms in this Lease (except this sub-clause) commencing immediately after the Initial Term expires.

20. Rights & Obligations on Expiry

20.1 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.

20.2 Handover of Possession

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

- 20.2.1 remove all of the Lessee's Equipment and repair any damage caused by such removal;
- 20.2.2 if required by the Council, remove and reinstate any alterations or additions made to the Premises by the Lessee;
- 20.2.3 leave the Premises in a clean, tidy and safe condition; and
- 20.2.4 complete any repairs which the Lessee is obliged to carry out under this Lease.

20.3 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.

20.4 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:

- 20.4.1 either party may terminate on one (1) month's notice given at any time; and
- 20.4.2 is on the same terms as this Lease.

21. Breach

21.1 Payment Obligations

21.1.1 The Lessee must make payments due under this Lease:

- (a) without demand (unless this Lease provides demand must be made);
- (b) without set off, counterclaim, withholding or deduction;
- (c) to the Council or as the Council directs; and
- (d) by direct debit or such other means as directed by the Council.

21.1.2 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.

22. 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.

22.1 Council's Rights on Breach

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

- (a) in an emergency; or
- (b) 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 within fourteen (14) days or after receiving notice requiring it to do so.

22.1.2 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.

22.2 Default, Breach and Re-Entry

In the event that:

22.2.1 any moneys (or part of any moneys) payable under this Lease are unpaid for the space of seven (7) days after any day on which the same ought to have been paid (although no formal or legal demand has been made);

22.2.2 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 this Lease and fails to remedy the breach within fourteen (14) days after receiving notice requiring it to do so;

22.2.3 in the case of a Lessee being a company or association:

- (a) 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;

- (b) any person appoints an administrator of the Lessee;
- (c) an application is made to any court to wind up the Lessee;
- (d) an application is made pursuant to section 411 of the *Corporations Act 2001*;
- (e) a Controller, Managing Controller, Receiver or Receiver and Manager is appointed to the Lessee or in respect of any property of the Lessee; or
- (f) the Lessee is deregistered or dissolved;

22.2.4 in the case of a Lessee being a natural person:

- (a) the Lessee commits an act of bankruptcy or a sequestration order is made against the Lessee;
- (b) a creditor of the Lessee presents a creditor's petition against the Lessee under the *Bankruptcy Act 1966*;
- (c) the Lessee presents a petition against himself or herself under the *Bankruptcy Act 1966*;
- (d) the Lessee signs an authority under section 188 of the *Bankruptcy Act 1966*;
- (e) 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;
- (f) 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
- (g) the Lessee is convicted of an indictable offence (other than a traffic offence);

22.2.5 execution is levied against the Lessee and not discharged within thirty (30) days;

22.2.6 any property in or on the Premises is seized or taken in execution under any judgment or proceedings;

22.2.7 the Premises are left unoccupied for one (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 this Lease.

23. 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 21.

23.1 **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 fourteen (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.

23.2 **Repudiation and Damages**

23.2.1 The Lessee acknowledges that the following obligations under this Lease are essential terms:

- (a) the obligation to pay Rent;
- (b) the obligation to pay Outgoings;
- (c) the obligations and prohibitions in relation to use of the Premises;
- (d) the obligations and restrictions in relation to additions and alterations to the Premises; and
- (e) the restriction on assignment, subletting, mortgaging and licensing.

23.2.2 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.

23.2.3 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.

23.2.4 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.

23.2.5 The rights of the Council under this clause 23.2 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.

23.3 **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.

24. Indemnity & Release

24.1 Risk

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

24.2 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:

- 24.2.1 any act or omission of the Lessee;
- 24.2.2 the overflow or leakage of water or any other harmful agent into or from the Premises;
- 24.2.3 any fire on or from the Premises;
- 24.2.4 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;
- 24.2.5 a breach of this Lease by the Lessee; or
- 24.2.6 the Lessee's use or occupation of the Premises.

24.3 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.

24.4 Indemnities are Independent

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

25. Goods & Services Tax

25.1 If 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:

- 25.1.1 the Agreed Consideration for that supply is exclusive of GST;
- 25.1.2 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
- 25.1.3 the Lessee shall pay the increased Agreed Consideration on the due date for payment by the Lessee of the Agreed Consideration.

25.2 Where the Agreed Consideration is to be increased to account for GST under this clause 25, the Council shall, on or before the date on which the Agreed Consideration is payable, issue a tax invoice to the Lessee.

25.3 If the Lessee does not comply with its obligations under this Lease or with its obligations under the GST Legislation in connection with this 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.

26. General

26.1 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.

26.2 Costs

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

26.3 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.

26.4 Exercise of Power

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

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

26.5 Notice

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

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

- (a) 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;
- (b) in the case of 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).

26.5.3 Notice served by pre-paid post will be deemed to have been given or served seven (7) Business Days after posting.

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

26.6 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.

26.7 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 and the disclosure statement, were made or given or relied upon.

26.8 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 three (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.

Released

EXECUTED AS AN AGREEMENT

Lessor Acknowledgments

Signed for **The Corporation of the Town of Walkerville** ABN 49 190 949 882
under section 44 of the *Local Government Act 1999*:
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

Lessee Acknowledgments

Signed for the **Walkerville Bowling & Community Club Incorporated**. ABN 16 853 237 152
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 **Walkerville Bowling & Community Club Incorporated**. ABN 16 853 237 152
was hereunto affixed in accordance with its Constitution & in the
presence of:

.....
Seal Holder

.....
Seal Holder

ANNEXURE A

SPECIAL CONDITIONS

1. In relation to the maintenance of the bowling surfaces and fixtures associated with the use of the bowling surfaces (**Bowling Surfaces**) (if any) on the Premises:
 - 1.1. the respective obligations of the Council and the Lessee are set out in the Maintenance Schedule; and
 - 1.2. the Council may set maintenance standards with respect to the Bowling Surfaces and may amend or update the maintenance standards at any time. If the Lessee is responsible for carrying out any maintenance under this clause the Lessee must comply with any reasonable maintenance standards set by the Council.
2. The Lessee will provide to the Council a duplicate key of all locks that are or may in the future be placed on any gates, doors or fences surrounding or upon the Premises.
3. The Lessee must at all times act in accordance with the reasonable directions and instructions of the Council in relation to each and every term and condition of this Lease and if the Lessee fails to observe its obligations under this Lease then the Council may terminate this Lease by notice to the Lessee.
4. The Lessee must keep all rubbish, bottles, cans, cartons and refuse in proper containers and shall in all respects comply with all Statutory Requirements and all reasonable directions of the Council.

ANNEXURE B

MAINTENANCE SCHEDULE

This schedule outlines the particular responsibilities of Council and the Lessee, where applicable, and must be read in conjunction with relevant provisions within this .

Building External

ITEM	LESSEE	COUNCIL
STORMWATER	CLEAN GUTTERS, DOWNPIPES AND STORMWATER DRAINS – KEEP FREE OF DEBRIS TO PREVENT BLOCKAGES	REPAIR/REPLACE AS REQUIRED (BASED ON COUNCIL'S CAPITAL WORKS PROGRAM AND BUDGET PRIORITIES) UNLESS DAMAGE CAUSED BY LESSEE'S NEGLIGENCE
WINDOWS	CLEAN GLAZING REPLACE DAMAGED WINDOWS, PANELS OR GLAZING	REPAIR/REPLACE FRAMES AND OPENING/CLOSING MECHANISMS UNLESS DAMAGE CAUSED BY LESSEE'S NEGLIGENCE
ROOF & GUTTERING	KEEP GUTTERING CLEAN AND FREE OF DEBRIS AT ALL TIMES	REPAIR LEAKS TO THE ROOF AND REPAIR OR REPLACE ROOF COVERING
DOORS & LOCKS	KEY REPLACEMENT KEEP DOORS OPERATIONAL – REPAIR (EG IF DOOR HINGE/LOCK BROKEN, REPAIR/REPLACE LOCKS, DOOR COVERINGS) REPLACE DAMAGED LOCKS REPLACEMENT OF DAMAGED DOORS	REPLACE AT END OF NATURAL LIFE
WALLS	WASH, CLEAN PERIODICALLY MINOR REPAIRS AND REPAINTING PERIODICALLY REMOVE GRAFFITI	MAINTAIN STRUCTURAL STABILITY
STAIRWELLS	KEEP FREE FROM RUBBISH AND DEBRIS KEEP ACCESS/EGRESS AREA CLEAR REPAIR/REPLACE AS REQUIRED INCLUDING BALUSTRADES, TREADS, RISERS AND LANDINGS	NIL
PAINTING	TOUCH UP WHERE DAMAGED REPAINT AS REQUIRED	NIL
RETAINING WALLS	NOT APPLICABLE	NIL
SIGNS	MAINTAIN/REPLACE (OBSERVING COUNCIL'S REQUIREMENTS FOR INSTALLATION OF SIGNAGE)	NIL
SECURITY LIGHTS	REPLACE GLOBES, MAINTAIN/REPLACE	NIL
PIPE WORK	REMOVE BLOCKAGES AND REPAIR DAMAGE	REPLACE AT END OF NATURAL LIFE REMOVE TREE ROOTS IF DAMAGE CAUSED BY TREES ON COUNCIL RESERVES
CLEANING	FULL RESPONSIBILITY	NIL

Building Internal

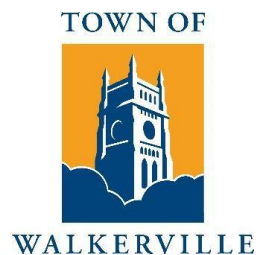
ITEM	LESSEE	COUNCIL
WATER, SEWERAGE, PIPING & ASSOCIATED FITTINGS	KEEP FREE FROM BLOCKAGES – UNBLOCK DRAINS, CLEAN FITTINGS, EG TAPS, TOILETS, SINKS – REPLACE WASHERS REPAIR DAMAGE	REPLACE AT END OF USEFUL LIFE
HOT WATER SERVICE	FULL RESPONSIBILITY	NIL
FIRE COMPLIANCE	INSTALL AND MAINTAIN IN ACCORDANCE WITH THE BUILDING CODE OF AUSTRALIA	NIL
TELECOMMUNICATIONS	FULL RESPONSIBILITY	NIL
AIR-CONDITIONING	MAINTENANCE AND REPAIR INCLUDING ALL TESTING AND SERVICING	REPAIR AND REPLACE AS REQUIRED (BASED ON COUNCIL'S CAPITAL WORKS PROGRAM AND BUDGET PRIORITIES UNLESS URGENT OR A SAFETY HAZARD)
ELECTRICAL SERVICES,	LIMITED OR MINOR RESPONSIBILITY FOR REPAIR AND REPLACEMENT	MAJOR OR SIGNIFICANT REPAIRS OR REPLACEMENT
LIGHTING & FIXTURES	REPLACE LIGHTS AND GLOBES, BALLASTS AND FUSES, REPAIR/REPLACE WIRING CONNECTIONS	NIL
SMOKE DETECTORS	FULL RESPONSIBILITY	NIL
CARPET	CLEAN – REMOVE ALL STAINS, REPAIR/REPLACE TO APPROPRIATE FINISH	NIL
HARD SURFACES	CLEAN/POLISH, REPAIR/REPLACE TO APPROPRIATE FINISH	NIL
INTERNAL WALLS/SCREENS	CLEAN, KEEP FREE OF MOULD/GRIME, REPAIR DAMAGE CAUSED BY USE, REPAIR CRACKING, REPLACE, REPAINT	REPLACEMENT RESPONSIBILITY FOR STRUCTURAL WALLS ONLY
CEILINGS	CLEAN, KEEP FREE FROM COBWEBS, MINOR REPAIRS/REPAINTING PERIODICALLY	REPLACE DUE TO STRUCTURAL FAILURE OR REPAIR DAMAGE CAUSED BY ROOF LEAKS
STAIRWELLS	CLEAN, KEEP FREE FROM COBWEBS, DEBRIS, REPAIR/REPLACE, EG BALUSTRADES, TREADS, RISERS AND LANDINGS	REPLACE DUE TO STRUCTURAL FAILURE
LOOSE FURNITURE	FULL RESPONSIBILITY	NIL
ELECTRICAL TEST & TAG	FULL RESPONSIBILITY	NIL
GENERAL CLEANING	FULL RESPONSIBILITY	NIL
SECURITY SYSTEM	FULL RESPONSIBILITY	NIL

External Surfaces

(inclusive of all ovals/playing fields/external areas)

ITEM	LESSEE	COUNCIL
LINEMARKING	FULL RESPONSIBILITY	NIL
MOWING	FULL RESPONSIBILITY	NIL
AERATING	FULL RESPONSIBILITY	NIL
FERTILISING	FULL RESPONSIBILITY	NIL
TOPDRESSING	FULL RESPONSIBILITY	NIL
WEED / PEST SPRAYING	FULL RESPONSIBILITY	NIL
WATERING	FULL RESPONSIBILITY	NIL
IRRIGATION SYSTEM	MANAGEMENT OF SYSTEM	MAINTENANCE OF SYSTEM
EXTERNAL FENCES & GATES	NIL	SCHEDULE UPGRADES & REPLACEMENT (BASED ON CAPITAL WORKS PROGRAM & BUDGET PRIORITIES)
CAR PARK SURFACES	NIL	NIL
CAR PARK LINE MARKING	NIL	NIL
GARDEN AREAS	KEEP CLEAN, UNOBSTRUCTED & MAINTAINED	NIL
STORAGE SHED	MAINTAIN IN GOOD REPAIR & WATERTIGHT	NIL
ENTRANCE FEATURE	NIL	NIL
INTERNAL ROADS	NIL	NIL
INTERNAL ROADS LINE MARKING	NIL	NIL
LIGHTING OF OVALS / PLAYING FIELDS	NIL	NIL
LIGHTING OF ROAD AREAS	NIL	FULL RESPONSIBILITY

ATTACHMENT D



DISCLOSURE STATEMENT LEASE OF COMMUNITY BUILDING & LAND

24 SMITH STREET, WALKERVILLE SA 5081

Prepared for

Walkerville Bowling & Community Club Incorporated

ABN 16 853 237 152

(Lessee)

Prepared by

The Corporation of The Town of Walkerville

ABN 49 190 949 882

(Lessor)

Town of Walkerville

P 08 8342 7100 | F 08 8269 7820

66 Walkerville Terrace, Gilberton SA 5081 | Postal PO Box 55, Walkerville SA 5081

walkerville@walkerville.sa.gov.au | www.walkerville.sa.gov.au

INTERPRETATION & DEFINITIONS

In this Lease unless the contrary intention appears:

Ancillary Facilities	Facilities included within the Premises; Premises inclusive of (as per site plan) two recreational grounds/playing greens, one club room inclusive of commercial kitchen, function room, facilities and storeroom
Commencement Date	Commencement date as per Item 6
Council	Refers to <i>"The Corporation of the Town of Walkerville"</i> as Lessor/Council
GST	<p>"GST" has the same meaning it does in Section 195-1 of the OST Act;</p> <p>"GST Act" means the A New Tax System (Goods and Services Tax) Act 1999;</p> <p>"Land" means the Land described in Item 9 of the Schedule and includes any part of the Land and, where the context allows, the Building;</p> <p>"Lessee" means the person described in Item 5 of the Schedule (and if more than one then jointly and severally) and where the context allows the heirs executors administrators successors and permitted assigns of such person (and if more than one then jointly and severally);</p> <p>"Lessee's Agents" means each of the Lessee's agents contractors officers employees subtenants invitees and other persons claiming through or under the Lessee;</p> <p>"Lessee's Proportion" means the proportion from time to time that the net lettable floor area of the Premises bears to the net lettable floor area of the Building provided that the Lessor may at any time to the extent permitted by law:</p>
Lessor	"Lessor" means the person described in Item 4 of the Schedule (and if more than one then jointly and severally) and where the context allows the heirs executors administrators successors and assigns of such person (and if more than one then jointly and severally);
Notice	"notice" means written notice;
Original Term	"Original Term" means the original term of this Lease set out in Item 12 of the Schedule;
Outgoings	"Outgoings" means subject to the commercial tenancies proviso and to the extent to which the same are not specifically payable from time to time by any occupant of the Premises under the terms of their occupancy the total of all present and future outgoing costs and expenses assessed charged or chargeable paid or payable or otherwise incurred in respect of the Land or the Lessor in relation to the Land or the use conduct management and maintenance of the Land and includes without limitation:
Permitted Use	"Permitted Use" means the use described in Item 4 of the Schedule;
Premises	"Premises" means that portion of the Building described in Item 2 of the Schedule and includes:

	<ul style="list-style-type: none">· All the Lessor's buildings improvements fixtures fittings plant equipment and chattels installed in or on the Premises;· All the conveniences services amenities and appurtenances of in or to the Premises;· And any alterations additions improvements or modifications made to the Premises from time to time
Rent	"rent" means the rent reserved by this Lease;
Term	"Term" means the Original Term and any extension or renewal of that and any period during which the Lessee holds over or remains in occupation of the Premises;

Released

DISCLOSURE STATEMENT

Regulation 5

1	Certificate Of Title	Portion of land comprised in Certificate of Title Volume 5255 Folio 827
2	Premises	24 Smith Street, WALKERVILLE SA 5081 (the “Premises”)
3	Lettable Area	The whole of the land comprised in Certificate of Title Register Book Volume 5255 Folio 827
4	Permitted Use	All activities operated or otherwise conducted by the “Lessee” (being activities generally related to and consisting of community, recreational and wellness activities) which are approved by the Lessor from time to time (which approval shall not be unreasonably withheld or delayed). At the Commencement Date, these activities comprise of the promotion of recreational and competitive bowls and ancillary and may include other like activities that are consistent with the aims and objectives of the Club.
5	Permitted Access	The “Lessor” hereby grants to the “Lessee” a licence to occupy the “Premises” for the duration of the term of this Agreement. The “Lessee” will, subject to the Councils rights of access and inspection, hereunder have exclusive occupation, possession and control of the “Premises” for the purpose only as specified within Item 4: Permitted Use of this Agreement.
6	Term Of Lease	The term hereof shall be for a period of two (2) years, beginning 01 January 2019 (“Lease Commencement Date”) and shall terminate at midnight of 31 December 2020 (“Lease Expiry Date”)
7	Extension Options	Should the “Lessee” wish to renew the Agreement notice of the intention must be provided by formal written submission to the “Lessor” not less than three (3) months prior to the “Lease Expiry Date” of the current term. Such renewal shall be subject to the agreement and approval of Council. Council reserves the right of full discretion when considering renewal options, where approval may be withheld in the event the “Lessee” has failed to satisfactorily adhere to the Agreements contractual obligations. The “Lessor” must provide the “Lessee” not less than two (2) month’s formal written notice, prior to the “Lease Expiration Date” of its approval or otherwise pursuant to this clause. Unless otherwise agreed, following the “Lease Expiry Date” no possession of the leased “Premises” shall be retained or occupied by the Lessee.
8	Premises Interpretation	The “Premises” in accordance with the interpretations within the <i>Retail & Commercial Leases Act 1995</i> is not defined as a ‘retail shop’
9	Premises Parking Facilities	The “Lessee” under the agreement permits the use of the Parking Areas on an unreserved, non-exclusive basis and solely by employees, patrons & guests. The “Lessor” shall not be liable for any incidents and this Lease shall not be affected if any parking rights of Tenant hereunder are impaired by any law, ordinance or other governmental regulation imposed after the date of the execution of this Lease.
10	Rent Payable	Base rent for the duration of the lease term, from “Lease Commencement Date” to “Lease Expiry Date” shall be due and payable in consecutive &

		equal calendar monthly instalments, in advance. Base rent, in accordance with clause 4.10.1 of the original Lease Agreement, shall be increased to \$1,527.00 exc. GST per annum (the “Base Rent”) (monthly instalment of \$127.25 exc. GST).
11	Mechanism Of Rent Review	“Base Rent” shall be subject to an annual upward adjustment in accordance with the CPI method of review of the then-current “Base Rent”. The first such adjustment shall become effective commencing on the first (1st) annual anniversary of the Term Commencement Date, and subsequent adjustments shall become effective on every successive annual anniversary for so long as this Lease continues in effect.
12	Outgoings	All statutory & operational outgoings, for the duration of the term are solely the liability of the Lessee. The Lessee shall, for the duration of the “Term”, incur all costs associated with electricity, gas, refuse collection, janitorial services, & data/networking & telecommunication facilities, together with all water, sewerage, land tax, additional taxes, assessments, charges & penalties.
13	Alterations	The “Lessee” shall not facilitate any alterations or additions to the “Premises” nor install any additional equipment (other than non-fixed equipment or equipment used or to be used in connection with any Ancillary Facilities) without the written consent of the “Lessor”.
14	Monetary Obligations	The Lessee, subject to Section 2: Lessee’s Covenants of the Original Lease Agreement, the Lessee is liable for the ongoing payment of rent, as per Item 10 of the “Schedule”, the reimbursement of capital expenditure, as set out in Annexure A, the reimbursement of all statutory outgoings inclusive of Water & Sewerage Rates & Land Tax, and all operating expenses
15	Capital Improvements	Excluding the “Lessors” obligations with regard to repairs & maintenance as set out within Appendix 2: Maintenance Schedule the “Lessee” acknowledges that the “Lessor” has no obligation under any circumstance to undertake any major capital works or improvements to the “Premises”. If the “Lessee”, on reasonable grounds, considers that any general deterioration or aging of the “Premises” will have a significant & adverse effect on the ability to cater for patronage or will fail to compete with neighbouring modern facilities of similar model, then the “Lessee” reserves the right to submit recommendations of improvement or capital works to the “Lessor”.
16	Insurance	Subject to clause 2.22.1 & 2.22.2 of the original Lease Agreement the “Lessee” must maintain adequate Public Liability Insurance for an amount of, no less than, Twenty Million Dollars (\$20,000,000.00) and appropriate Business Insurances, ensuring the policy is inclusive of all contents. The “Lessee” shall produce to the “Lessor” the Certificates of Currency from the relevant insurance company within fourteen (14) days of the execution of this agreement. All costs associated with the adoption of insurance policies are to be borne by the “Lessee”, with the exception of any policy held in the name of the “Lessor” unless otherwise agreed to.

17	Default	<p>The parties indemnify and agree to hold indemnified, the other, from and against all claims, actions, proceedings, costs, expenses, penalties, demands, losses and liabilities suffered or incurred which are the result of any act omission or default of the accountable party.</p> <p>If this Agreement shall terminate by a mean other than effluxion of time and as a result of breach or default by the “Lessee” in the payment of rent when due to “Lessor” as herein provided, and if said default shall continue for fifteen (15) days after written notice thereof shall have been given to “Lessee” by “Lessor”, or if default shall be made in any of the other covenants or conditions to be kept, observed and performed by “Lessee”, and such default shall continue for thirty (30) days after notice thereof in writing without correction thereof then having been commenced and thereafter diligently prosecuted, “Lessor” may declare the term of this Lease ended and terminated by giving Tenant written notice of such intention, and if possession of the Leased Premises is not surrendered, “Lessor” may re-enter said premises. “Lessor” shall have, in addition to the remedy above provided, any other right or remedy available to “Lessor” on account of any “Lessee” default, either in law or equity. “Lessor” shall use reasonable efforts to mitigate its damages. Termination of this agreement under these grounds releases each party from further liability under the agreement, but does not affect a party’s rights or obligations prior to the detrimental breach. All parties, in respect to events of default, must ensure to act within the parameters of termination action as specified within the Retail & Commercial Leases Act 1995.</p>
18	Redevelopment, Asset Rationalisation & Demolition	<p>If as part of any redevelopment, asset rationalisation 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 will be entitled to terminate this Lease subject to the following provisions:</p> <p>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;</p> <p>The Council may at any time after providing the Lessee with the information specified in clause 18.1, 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 six (6) months after the Termination Notice is given. This Lease will, unless terminated earlier by the Lessee under clause 18.3, come to an end at midnight on the day specified in the Termination Notice;</p> <p>At any time after receiving a Termination Notice under clause 18.1, the Lessee may terminate this Lease by giving not less than seven (7) days’ written notice to the Council; and</p> <p>When this Lease is terminated (whether by the Council under clause 18.2 or by the Lessee under clause 18.3), 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</p>

		<p>regard to that existing breach will continue.</p> <p>Council may 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.</p>
19	Termination	<p>Grounds of termination are inclusive of the expiration of the term with no renegotiation options, redevelopment of the premises, and default due to the breach of contractual obligations under this agreement or circumstantial termination by mutual agreement. Subject to clause 4.1.2 of the original Lease Agreement. Furthermore, liabilities of either party in event of termination are inclusive of clauses 4.1.3, 4.1.4, 4.1.5 & 4.2.</p>
20	Warnings	<p>Oral representations made by the “Lessor” or the representing agent on which the “Lessee” has relied should be reduced to writing and signed by or on behalf of the “Lessor” before the “Lessee” enters into the lease. The “Lessee” should obtain independent legal and financial advice before entering into the lease.</p>
21	Exclusions	<p>In accordance with Part 3, Section 18 of the Retail and Commercial Leases Act 1995 and Regulation 6 of the Retail and Commercial Leases Regulations 2010 the “Lessor” does not warrant that the “Premises”, for the duration of the lease term, be structurally suitable for the permitted use (see Item 4: Permitted Use) of the “Lessee”</p>

Released

ATTACHMENT D

ACKNOWLEDGEMENTS

LESSEE ACKNOWLEDGEMENTS

In accordance with Part 3, Sub-section 12 of Retail & Commercial Leases Act 1995, the “Lessee” confirms and acknowledges that the execution of this disclosure statement affirms the receipt and obtainment of this disclosure statement.

Signed for the **WALKERVILLE BOWLING & COMMUNITY CLUB INCORPORATED** ABN 16 853 237 152
by its authorised delegate in the presence of:

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

OR

The common seal of the **WALKERVILLE BOWLING & COMMUNITY CLUB INCORPORATED** ABN 16 853 237 152
was hereunto affixed in accordance with its Constitution & in the presence of:

..... Seal Holder
..... Seal Holder

LESSOR ACKNOWLEDGEMENTS

By signing this disclosure statement, the “Lessor” confirms that this disclosure statement contains all representations in relation to the proposed lease agreement, it reflects all agreements made between the parties and the “Lessor” ensures that no information with respect to this agreement, premises or parties has been knowingly withheld.

Signed for **THE CORPORATION OF THE TOWN OF WALKERVILLE** ABN 49 190 949 882
by its authorised delegate in the presence of:

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