



Item No: 16.1.2
 File No: 16.51.4.3
 Date: 19 June 2017
 Attachment: A, B, C, D

Meeting: Council

Title: Walkerville Lawn Tennis Club Lease

Responsible Manager: General Manager, Heather Barclay

Author: Property & Contracts Officer, Allison Down

Key Focus Area 2 & 3: Sustainable and resilient future, based on sensitive and sensible approaches to planning, heritage, economic development and the public realm;
 Transparent and accountable local tier of Government that is respected for its forward thinking approaches and cross-Council collaborations.

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 commercial information of a confidential nature and the disclosure of which could reasonably be expected to prejudice the commercial position of the person who supplied the information or that would confer a commercial advantage on a third part and that would, on balance, be contrary to the public interest.

Recommendation

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 Chief Executive Officer, Kiki Magro, the General Manager, Heather Barclay, the Property & Contracts Officer, Allison Down and the Compliance & Governance Officer Deb Bria, be excluded from attendance at the meeting for Agenda Item Walkerville Lawn Tennis Club Lease.

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)

That Council:

1. offer the Walkerville Lawn Tennis Club a five (5) year lease with a five (5) year right of renewal on the property known as Walkerville Lawn Tennis Club, corner of Stephen Terrace and Creswell Court, Gilberton, on the terms of lease attached;
2. set an annual rent of \$1,500;
3. authorise the Chief Executive Officer to make such non material amendments as required to finalise and execute the lease by 1 September 2017 or provide a report back to Council; and
4. retrospectively apply the new lease fee to the rental owed to Council for the current year when the previous lease expired on 30 September 2016.

Recommendation (Confidential)

Pursuant to s.91(7)

That having considered Agenda Item Walkerville Lawn Tennis Club Lease 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 Lawn Tennis Club Lease, 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

The purpose of this report is to present the proposed lease for the Walkerville Lawn Tennis Club to Council for consideration and endorsement.

Background

Council has previously determined to offer Walkerville Lawn Tennis Club a lease of five years with an option to renew the lease for a further five years if desired by both parties.

At a Special Meeting of Council on 27 September 2016, Council resolved:

“CNC137/16-17

*d) Council adopts Option a), of Attachment C for **Creswell Reserve Sports and Recreation.***

Option a) of Attachment C for Creswell Reserve Sports and Recreation provided for:

“(a) *New five year lease (consider 5 + 5) and clarify lease area.*

Implications:

- (i) *Locks up the site to the tenant for five years which is not particularly long.*
- (ii) *If 5 + 5 then Council will need to publicly consult pursuant to section 202 of the LG Act and in any event, will be required to comply with its Disposal of Land and Assets Policy.*

- (iii) *Need to consider terms of lease and such things as responsibility for outgoings and maintenance and whether there will be a rent payable.*
- (iv) *Will involve negotiating a new lease. This needs to be dealt with quickly, given that the lease expires on 30 September 2016.*
- (v) *If five years or less, no requirement to publicly consult.*
- (vi) *Any lease must be authorised by the community land management plan for this site.*
- (vii) *Given the circumstances, a direct negotiation as per paragraph 6.5.5 of Council's Disposal of Land and Assets Policy would be suitable."*

A copy of the proposed draft lease and disclosure statement are attached and are Attachment A. The proposed lease is a model lease in accordance with the *Retail and Commercial Leases Act 1995* and has been prepared in collaboration with Wallman's Lawyers.

Discussion/Issues for Consideration

The Administration first met with the Walkerville Lawn Tennis Club (the Club) in November 2016 to introduce and socialise the proposed new lease seeking feedback and comment from the Club. Negotiations have since been ongoing in an effort to progress the lease to a stage where it may be presented to Council for consideration. A copy of the initial draft lease provided to the Club is attached and marked **Attachment A**.

As the new proposed lease has been developed to be consistent with the *Retail and Commercial Leases Act 1995* and based on a model template, it varies from the last lease executed with the Club therefore there have been ongoing negotiations to ensure that a new lease does not roll back the use and operation rights that the Club have typically enjoyed under their previous lease. Any proposed changes to the template have also been reviewed by Wallman's to ensure than any changes do not compromise the legal integrity of the lease.

Whilst negotiating the current lease the club have refrained from payment of rent for this year in anticipation of possibly being allowed to pay a lower rental if Council should be of a mind to strike a lower rent and allow it to be applied retrospectively.

The Club is approaching its centenary of its formation and enjoys a healthy level of membership. It is inactive over the winter months between May and October but when operational, and excluding tennis competitions, also allows the facility to be hired by schools or for hosting of private functions within the clubrooms from time to time for small family type functions. Under its previous lease, the rental amount was calculated on 17.5% of the annual income and typically cost the Club between \$2,700 and \$2,900 per annum. The courts are maintained by the Club.

The new lease proposes an annual rental fee of \$1,500 but also seeks to pass on costs Council incurs in relation to the Emergency Services Levy for the site, asset insurance costs, fire protection inspection and maintenance and testing and tagging. These are routine costs and represent costs that the Administration either currently passes onto other lessee's or is proposing to pass on under new leases for community facilities. The reason that Council provides these services to community groups like the Tennis Club is that due to the number of services and assets that Council has serviced, it can often access insurance or servicing costs at a lower rate for the clubs than if the each club arranged such items for themselves. It also provides Council with assurance that such essential services are upheld annually.

It would be preferable to the Club if they are charged a peppercorn rental or an amount of \$300 per annum and no other charges passed onto them. Through various negotiations they have indicated that any costs the Club incurs will be recouped from members and that the facility and court maintenance is carried out by club volunteers. Copies of corospondance from the Club to Council are attached and marked **Attachment D**.

A key item in the negotiation of the lease for the Tennis Club has been in reviewing outgoings and in particular, electricity supplied to the site. Council and the Club share a singular power bill which covers the Tennis Club and the operation of the lighting on the public toilets at the base of Creswell Court. A simple solution for the distribution of the power costs has not been easily concluded. The Club has suggested that Council should pay the electricity with the lowest quarter and then subtract this amount from all other bills on the assumption that it would indicate the cost of the public lighting at a time when the Club is inactive.

A copy of the schedule of clauses that were of concern to the Club, including feedback from Wallman's Lawyers and recommendations is attached and marked **Attachment B**. The final lease in **Attachment C** is based in part on the deliberations and recommendations contained therein.

In conclusion, a number of leases that Council currently has in place are being held over vary greatly from one lease to the next and in some instances create inequities and disparities. Developing consistency amongst the various leases that Council holds is an adaptive solution to a complex problem. Effective leadership and governance are often regarded as implementing order and authority, so it goes hand in hand that establishing uniformity and better sustainability through Council's leasing practices is part of the equation for providing such leadership and governance.

Although Council can anticipate resistance to the changed new leases, the proposed leasing structure will provide consistency and support sustainability. Determining whether to apply the new leases fully by applying the full rental amounts proposed or accepting a range of leasing amendments that favour the clubs could be likened to ripping off a band-aid and can be done quickly or over a period of time, depending on Council's appetite for consistency and speedy resolution.

A copy of the draft lease that has been revised and proposed in conjunction with the Club is attached and marked **Attachment C**.

Options for Consideration

In considering the proposed lease for the Walkerville Lawn Tennis Club can may choose to:

1. endorse the proposed lease;
2. not endorse the proposed lease; or
3. request amendments to the proposed lease and defer consideration of the lease to another meeting of Council.

Option 1 – endorse the proposed lease

Council may:

1. Offer a five year lease with an option to renew for an additional five years on the property known as Walkerville Lawn Tennis Club, Corner of Stephen Terrace and Creswell Court, Gilberton;
2. Set an annual lease fee of \$1,500;
3. Authorise the Chief Executive Officer to finalise and execute the lease by 1 September 2017;
4. Authorise the Chief Executive Officer to make make minor non-material amendments to the lease in order to effect the execution.

Option 2 – not endorse the proposed lease

Alternatively, Council may:

1. Withhold offering a new lease
2. Continue to retain the current leasing arrangement that is in over holding; and
3. Advise the Walkerville Lawn Tennis Club that Council has determined with withhold from establishing a new lease.

Option 3 – request amendments to the proposed lease and defer consideration of the lease to another meeting of Council

Council may:

1. Request the Administration to further amend the proposed lease; and
2. Defer consideration of the lease to a future meeting of Council.

Analysis of Options

Option 1 is the recommended option for Council to consider. This will allow for improving the current over holding that is in place and ensure compliance with a range of obligations under the *Local Government Act 1999*, the *Retail and Commercial Leases Act 1995*.

Option 2 provides Council with an opportunity to take no action in the event that Council is of a mind to alter its decision from 27 September 2016. This option would allow Council to retain the current arrangement whereby the lessee will remain in over holding.

Option 3 provides Council with an opportunity to delay endorsing the lease should Council consider that proposed lease is unsatisfactory. This would provide Council with an opportunity to provide feedback and enable the Administration to explore alternative options and present a report back at a future date.

Financial Implications

The proposed lease fee of \$1,500 from \$2,700 is a substantial decrease for the Club, however the Club have requested that Council consider a lower fee or peppercorn rental to reduce the financial burden upon their members. The proposed fee adequately reflects the administration costs associated with the operational management of the lease whilst remaining low and consistent with community lease fees.

Community Implications

As a Tennis facility the Lawn Tennis courts are highly regarded and represents a key asset for Council and its community. However, it must be kept in mind that this facility is enjoyed exclusively by Club members and occasional hirers.

Regional Implications

The Club enjoys a membership base that includes both local residents from within the Walkerville municipality as well as surrounding suburbs and councils.

Governance Implications

The proposed lease is consistent with the *Retail and Commercial Leases Act 1995* and ensures that Council manages its obligations under the *Local Government Act 1999*. The CEO has delegated authority to grant leases pursuant to her Instrument of Delegation under the *Local Government Act 1999*.

Preferred Option & Reasoning

Option 1 – endorse the proposed lease

That Council:

1. Offer the Walkerville Lawn Tennis Club a five (5) year lease with a five (5) year right of renewal on the property known as Walkerville Lawn Tennis Club, corner of Stephen Terrace and Creswell Court, Gilberton, on the terms of lease attached;
2. Set an annual rent of \$1,500;
3. Authorise the Chief Executive Officer to make such non material amendments as required to finalise and execute the lease by 1 September 2017 or provide a report back to Council; and
4. Retrospectively apply the new lease fee to the rental owed to Council for the current year when the previous lease expired on 30 September 2016.

Officers have introduced the proposed new lease with the Walkerville Lawn Tennis Club committee and have worked with Committee to ensure that the lease is understood and acceptable to the Club. This has involved consultation with the Club and with Wallman's Lawyers to ensure the document lease remains consistent with the model lease under the *Retail and Commercial Leases Act 1995*.

Attachment/s delete if no attachments

| | |
|--------------|---|
| Attachment A | Original draft lease and disclosure statement |
| Attachment B | Amendment schedule |
| Attachment C | Proposed lease and disclosure statement |
| Attachment D | Correspondence with the Tennis Club |

draft

CORPORATION OF THE TOWN OF WALKERVILLE

(Council)

AND

THE WALKERVILLE TENNIS CLUB INC

(Lessee)

PORTION OF LAND

COMMUNITY FACILITIES LEASE

WALKERVILLE LAWN TENNIS CLUB

SCHEDULE

| | | |
|---|---|---|
| ITEM 1 Premises | The portion of the land comprised in Certificate of Title Volume 5261 Folio 460 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 5261 Folio 460 | |
| ITEM 3 Initial Term | Five (5) years commencing on //DATE// (Commencement Date) and expiring at midnight on //DATE// | |
| ITEM 4 Renewal(s) | Five (5) years commencing on //DATE// and expiring at midnight on //DATE// | |
| 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 | <p>Review Dates</p> <p>(a) Date: //DATE// Year(s): //YEARS//</p> <p>(b) Date: //DATE// Year(s): //YEARS//</p> | <p>Review Method</p> <p>CPI Review</p> <p>CPI Review</p> |
| ITEM 7 Permitted Use | Lawn tennis club | |
| ITEM 8 Public Risk Insurance | Twenty Million Dollars (\$20,000,000.00) | |
| ITEM 9 Refurbishment | At the expiry or earlier termination of this Lease | |
| ITEM 10 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. | |

BETWEEN

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

AND

THE WALKERVILLE LAWN TENNIS CLUB INC ABN 43 516 536 926 of c/- 6/14 Creswell Court, Gilberton 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.

Initial Term means the initial term of this Lease commencing on the Commencement Date described in Item 3.

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 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 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 connection with the maintenance, repair, replacement and renovation of car parking areas, pedestrian areas and landscaped areas within and around the Building;
- (h) all costs of the Council in relation to establishing, maintaining, repairing and replacing common signs, notices and directory boards within the Building; and
- (i) 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).

Renewal Term means the term (if any) of renewal or extension in Item 4.

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 10.

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

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

- (a) who 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 10 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, 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.
- 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.
- 12.1.4 If the Maintenance Schedule makes the Lessee responsible for any Maintenance, the Lessee must, at the same time as providing a copy of any documentation required by clause 14, provide a report to the Council setting out the amount of money which the Lessee proposes to set aside in the following year for Maintenance.
- 12.1.5 The Lessee must, when requested to do so by the Council, provide the Council with a report setting out:
- (a) all projected items of maintenance, the approximate date when each item of maintenance is likely to be required and the estimated cost; and
 - (b) the amount of money currently set aside by the Lessee for Maintenance.

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 Refurbishment, Re-fitting and Redecoration

The Lessee must refurbish, re-fit and redecorate the Premises on or before each of the dates specified in Item 9 to the following specification:

- 12.4.1 clean and repair all surfaces to be redecorated;
- 12.4.2 paint (with at least two coats) or wallpaper, stain, varnish or polish each surface to be redecorated according to the previous treatment of that surface.

12.5 Cleaning

The Lessee must:

- 12.5.1 keep the Premises clean and tidy;
- 12.5.2 keep the Premises free of vermin, insects and other pests; and
- 12.5.3 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 must not hire out or otherwise part with possession of the Premises without the Council's consent.

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

17.2.1 the Council must provide the Lessee with details of the proposed Redevelopment sufficient to indicate a genuine proposal to carry out that

Redevelopment within a reasonably practical time after this Lease is to be terminated;

- 17.2.2 the Council may at any time after providing the Lessee with the information specified in clause 17.2.1, give the Lessee a written notice of termination of this Lease (**Relocation Notice**) specifying the date on which the Lessee must relocate, being a date not less than six (6) months after the Relocation Notice is given;
 - 17.2.3 the Lessee must relocate to the alternative site on the date stipulated in the Relocation Notice and shall give to the Lessee all such assistance and cooperation as may be necessary to give effect to this clause and to the relocation including the execution of any documents or instruments which the Lessee reasonably requires;
 - 17.2.4 the alternative site must, in the reasonable opinion of the Council, be of comparable quality and utility to the Premises;
 - 17.2.5 any reasonable costs incurred in relocating the Lessee shall be borne by the Council; and
 - 17.2.6 the Lessee's occupation of the alternative site will be on the terms and conditions of this Lease with such amendments as are necessary for the terms and conditions of this Lease to apply to the Lessee's occupation of the alternative site.
- 17.3 Negotiate with the Lessee as to the necessary financial and maintenance contribution which is required from the Lessee in order for the Council to reconsider undertaking the Redevelopment. The Council may, at any reasonable time during these negotiations, exercise any of its other rights under this clause 17.

18. RENEWAL

- 18.1 If a right of renewal has been granted to the Lessee as described in Item 4 and the Lessee wishes to exercise that right of renewal, then the Lessee must serve a written notice on the Council not less than six (6) months and not more than twelve (12) 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 must renew this Lease for the first Renewal Term on the terms in this Lease (except this subclause) commencing immediately after the Initial Term expires.
- 18.2 The Lessee will not be entitled to a right of renewal if:
- 18.2.1 the Lessee has been in breach of this Lease at any time before giving notice of the Lessee's exercise of the right of renewal;
 - 18.2.2 the Lessee is in breach of this Lease at the time of giving that notice; or
 - 18.2.3 the Lessee is in breach or commits a breach of this Lease after giving notice but before commencement of the Renewal Term.

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 refurbish the Premises as required under clause 12.4;
- 19.2.4 leave the Premises in a clean, tidy and safe condition; and
- 19.2.5 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:

- 23.2.1 all stamp duty (if any) assessed on this Lease;
- 23.2.2 one half of all other preparatory costs incurred by the Council. For the purposes of this subclause, **preparatory costs** has the meaning described in the Act, namely legal and other expenses incurred by the Council in connection with the preparation, negotiation, stamping and registration of this Lease including the costs of attendances on the Lessee by the Council or a solicitor acting for the Council;
- 23.2.3 all costs including legal and other expenses incurred by the Council in connection with the preparation, negotiation, revision, execution and registration of any extension of this Lease; and
- 23.2.4 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, 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

THE COMMON SEAL of)
CORPORATION OF THE TOWN OF)
WALKERVILLE was hereunto affixed)
in accordance with its Constitution and)
in the presence of:)

.....
Seal Holder

.....
Seal Holder

LESSEE

THE COMMON SEAL of)
THE WALKERVILLE TENNIS CLUB)
INC was hereunto affixed in)
accordance with its Constitution and in)
the presence of:)

.....
Seal Holder

.....
Seal Holder

ANNEXURE B

SPECIAL CONDITIONS

1. In relation to the maintenance of the tennis court surfaces and fixtures associated with the use of the tennis court surfaces (**Tennis Court 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 Tennis Court 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 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 C

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 Repair and repaint as required | <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 (based on Council's capital works program and budget priorities) |
| Doors/locking mechanisms | <ul style="list-style-type: none"> Key replacement Provide key to Council Keep doors operational – minor repair works (eg if door hinge/lock broken, repair/replace locks, door coverings) Replace damaged locks | <ul style="list-style-type: none"> Replace at end of natural life Major works (eg replacement of damaged doors) to be carried out by Council (based on Council's capital works program and budget priorities unless urgent or a safety hazard) and only if not caused by failure of Lessee to maintain |
| Walls | <ul style="list-style-type: none"> Wash, clean periodically Repair and repaint 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 |
| Building structural maintenance (includes foundation, salt damp course, window frames, exterior walls, verandah posts, roof structure, gutters, exterior steps, stairs, guard / hand rails, ramps, ceilings and interior walls) | <ul style="list-style-type: none"> • Nil responsibility | <ul style="list-style-type: none"> • Full responsibility (where not as a result of mis-mangement and maintenance of Lessee) |

2. Building Internal

| Item | Lessee | Council |
|--|--|--|
| Water, sewer and gas piping (plumbing?) | <ul style="list-style-type: none"> • Keep free from blockages – unblock drains • Repair damage • Minor works | <ul style="list-style-type: none"> • Replace at end of useful life • Major works (based on Council's capital works program and budget priorities unless urgent or a safety hazard) and only if not caused by failure of Lessee to maintain |
| Hot water system | <ul style="list-style-type: none"> • Full responsibility | <ul style="list-style-type: none"> • Nil responsibility • Repair and replace as required (based on Council's capital works program and budget priorities unless urgent or a safety hazard) |
| 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"> • Purchase, insurance, maintenance and repair including all testing and servicing • Running costs | <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"> • Purchase, insurance, maintenance and repair including all testing and servicing • Running costs • 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"> • Full responsibility for repair and replacement | <ul style="list-style-type: none"> • Nil responsibility |
| 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 • Repair damage caused by use • Repair cracking, replace, repaint as required | <ul style="list-style-type: none"> • Replacement responsibility for structural walls only |
| Ceilings | <ul style="list-style-type: none"> • Clean, keep free from cobwebs, etc • Repair/repaint 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"> • At lessee's cost | <ul style="list-style-type: none"> • To arrange |
| 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 |
| Pest control | <ul style="list-style-type: none"> • Full 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"> • ### | <ul style="list-style-type: none"> • ### |
| Irrigation system | <ul style="list-style-type: none"> • Management of system | <ul style="list-style-type: none"> • Maintenance of system |
| Internal fences and gates | <ul style="list-style-type: none"> • Full responsibility | <ul style="list-style-type: none"> • Nil responsibility |
| 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"> • ### | <ul style="list-style-type: none"> • ### |
| 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 |
| Trees and vegetation outside leased area | <ul style="list-style-type: none"> • Nil responsibility | <ul style="list-style-type: none"> • Full responsibility |
| Underground mains water and sewerage pipes to connection point with the Premises | <ul style="list-style-type: none"> • Nil responsibility | <ul style="list-style-type: none"> • Full responsibility |
| Septic tank / aerobic system | <ul style="list-style-type: none"> • ### | <ul style="list-style-type: none"> • ### |

DISCLOSURE STATEMENT

Premises: Walkerville Lawn Tennis Club, Cnr Stephen Tce and Creswell Ct,
Gilberton SA 5081

Lessor: **CORPORATION OF THE TOWN OF WALKERVILLE** ABN 49
190 949 882 of 66 Walkerville Terrace, Gilberton SA 5081

Lessee: **THE WALKERVILLE LAWN TENNIS CLUB INC** ABN 43 516
536 926 of C/- 6/14 Creswell Court, Gilberton SA 5081

IMPORTANT NOTICE

EXCLUSION OF WARRANTY OF FITNESS FOR PURPOSE

Retail and Commercial Leases Act 1995: Section 18

Retail and Commercial Leases Regulations 2010: Regulation 6

**THE LESSOR DOES NOT WARRANT THAT THE PREMISES
THAT YOU ARE ABOUT TO LEASE WILL, FOR THE
DURATION OF YOUR LEASE, BE STRUCTURALLY
SUITABLE FOR THE TYPE OF BUSINESS THAT YOU
INTEND TO CARRY ON.**

DISCLOSURE STATEMENT UNDER SECTION 12 OF *RETAIL AND COMMERCIAL LEASES ACT 1995*

INFORMATION FOR LESSEES

Please read the following information carefully.

What is a lease?

A lease is a very important document. It is a legally binding contract between the Lessor (landlord) and the Lessee (tenant). It sets out the rights and obligations of the Lessor and the Lessee.

A document that binds the Lessee to enter into a lease or to take a shop on lease for a renewed term should be treated as if it were the lease.

What should I look for in a lease?

The main features to consider are -

- the term of the lease;
- whether there is an option to renew or extend the lease (and the method of exercising any such option);
- the rent and the basis for rent reviews;
- the amounts that the Lessee will have to pay in addition to rent eg fit out costs, maintenance and repair costs and shared operating expenses;
- the consequences of breaching a term of the lease.

Make sure you read the whole document and understand the obligations it will place on you, especially the extra charges in addition to rent that you will have to pay.

If the lease is a sublease, you should seek information about the Lessor's rights and obligations under the headlease that are relevant to the lease of the shop.

What information is the Lessor required to give me?

The Lessor must give you a copy of the proposed lease and this disclosure statement. The disclosure statement must contain the matters set out in section 12 of the *Retail and Commercial Leases Act 1995*.

What should I do before signing a lease or other binding document?

Do not sign until you understand exactly what your obligations under the lease will be.

Before signing a lease or other binding document, you should obtain independent legal and financial advice.

- You should discuss the lease (or any agreement for a lease) and the disclosure statement with your own lawyer or leasing adviser.
- You should seek advice about the financial commitments under the lease from your own accountant or recognised financial or business adviser.
- You should also seek advice from an association representing the interests of the Lessees.

Before signing a lease or other binding document, oral representations made by the Lessor or the Lessor's agent on which you have relied should be reduced to writing and signed by or on behalf of the Lessor.

Before signing a lease or other binding document, the Lessee should sign an acknowledgment of receipt of the disclosure statement.

DRAFT

1 - Details of shop

Address: Cnr Stephen Tce and Creswell Ct, Gilberton SA 5081

Lettable area:

The shop may only be used for: Lawn tennis club

2 - Term of lease

Term of lease: Five (5) years

3 - Renewal or extension of lease

- There is no right to renew or extend the term of the lease.
- The lease gives a right to renew or extend the term of the lease as follows:

One right to renew for five (5) years

4 - Access to shop

Hours during which the Lessee will have access to the shop outside trading hours: All hours

Date on which the shop will be available for occupation:

5 - Monetary obligations

The Lessee's obligations to pay rent, to pay or reimburse outgoings, to make or reimburse capital expenditure and any other monetary obligations imposed on the Lessee are set out in Appendix A.

6 - Retail shopping centre details

- The shop is in a retail shopping centre within the meaning of the *Retail and Commercial Leases Act 1995*. See Appendix B for details.
- The shop is not in a retail shopping centre within the meaning of the *Retail and Commercial Leases Act 1995*.

7 - Consequences of breach

The Lessee has no right to early termination of the lease, and such early termination will be a breach of the lease. The legal consequences of early termination of the lease by the Lessee are as follows:

- (a) The Lessee is liable for all the rent and other moneys payable under the lease until the end of the agreed term of the lease.
- (b) The Lessee is also liable for all losses, costs and damages suffered by the Lessor that result from early termination.
- (c) The Lessor may have remedies as set out below.

The legal consequences of other breaches as set out in clause # of the lease (but the Lessor's legal remedies are not limited to those clauses of the lease) are as follows:

- (a) The Lessee is liable for all the rent and other moneys payable under the lease until the end of the agreed term of the lease.
- (b) The Lessee is also liable for all losses, costs and damages suffered by the Lessor that result from early termination.

- (c) The Lessor may attempt to remedy the breach and then recover the costs from the Lessee.
- (d) The Lessor may obtain a court order for specific performance of the lease.
- (e) The Lessor may obtain an injunction against a continuing or persistent breach.
- (f) The Lessor may re-enter and terminate the lease.
- (g) The Lessor may sue to recover any rent or other money then due and unpaid.
- (h) The Lessee may be liable to pay damages and costs (including legal costs) to the Lessor.
- (i) The Lessee may be liable to pay interest to the Lessor.
- (j) The Lessor may distrain against the goods of the Lessee.
- (k) The Lessor may have recourse to any security bond held from the Lessee.

The above is not a complete list of the consequences of breach and does not limit the Lessor's rights under the lease or otherwise. Please refer to the lease and seek independent legal advice.

8 - Warnings

Oral representations made by the Lessor or the Lessor's 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 this lease.

The Lessee should obtain independent legal and financial advice before entering into this lease.

Date:

Signature of Lessor:

Name of Lessor: **CORPORATION OF THE TOWN OF WALKERVILLE** ABN 49 190 949 882

Address of Lessor: 66 Walkerville Terrace, Gilberton SA 5081

Acknowledgement of receipt

I acknowledge receipt of this Disclosure Statement including:

- Appendix A – Monetary obligations under lease
- Appendix B – Retail shopping centre details
- Attachment – Shop fitting or refitting obligations
- Attachment – Fixtures, plant or equipment obligations
- Attachment – Sinking fund obligations
- Attachment – Proposed changes to shopping centre
- Attachment – Current tenant mix
- Attachment – Proposed changes to current tenant mix
- Attachment – Details of tenant association

Date:

Signature of Lessee (**NOTE THE EXCLUSION OF WARRANTY BELOW**):

.....

Name of Lessee: **THE WALKERVILLE LAWN TENNIS CLUB INC** ABN 43 516 536 926

Address of Lessee: C/- 6/14 Creswell Court, Gilberton SA 5081

ATTENTION - IMPORTANT NOTICE

EXCLUSION OF WARRANTY OF FITNESS FOR PURPOSE

Retail and Commercial Leases Act 1995: Section 18

Retail and Commercial Leases Regulations 2010: Regulation 6

THE LESSOR DOES NOT WARRANT THAT THE PREMISES THAT YOU ARE ABOUT TO LEASE WILL, FOR THE DURATION OF YOUR LEASE, BE STRUCTURALLY SUITABLE FOR THE TYPE OF BUSINESS THAT YOU INTEND TO CARRY ON.

APPENDIX A: MONETARY OBLIGATIONS UNDER LEASE**PART 1 – RENT****1. Base rent**

The base rent payable for the shop is or is calculated as follows: One thousand five hundred dollars (\$1,500.00) (GST exclusive) per annum

2. Basis on which base rent may be changed

The base rent may be changed on the following basis: CPI Review annually

3. Other rent

Other rent payable for the shop is or is calculated as follows: Nil

PART 2 – CAPITAL EXPENDITURE**4. Permissible obligations (section 13 of *Retail and Commercial Leases Act 1995*)**

The Lessee will be liable for the following kinds of capital expenditures:

- to pay or reimburse the cost of making good damage to the premises arising when the Lessee is in possession or entitled to possession of the premises
- to fit or refit the shop as set out in the attachment marked "Shop fitting or refitting obligations" (*The attachment must include sufficient details to enable the Lessee to obtain an estimate of the likely cost of complying with the obligation*)
- to provide fixtures, plant or equipment as set out in the attachment marked "Fixtures, plant or equipment obligations" (*The attachment must include sufficient details to enable the Lessee to obtain an estimate of the likely cost of complying with the obligation*)
- to contribute to a sinking fund to cover major items of repair or maintenance as set out in the attachment marked "Sinking fund obligations" (*The attachment must include reasonable details of the Lessee's obligations*)

PART 3 – OUTGOINGS**5. Categories and estimate of annual liability**

The Lessee will be liable to pay or reimburse outgoings as follows:

| Category of outgoings | Estimate of Lessee's annual liability |
|---|--|
| Local Government Rates and Charges | \$9,233.00per year |
| Electricity | \$As consumed per year |
| Gas and Oil | \$As consumed per year |
| Water and Sewerage Rates and Charges | \$As consumed per year |
| Sewerage Disposal and Sullage | \$As consumed per year |
| Energy Management Systems | \$ per year |
| Air Conditioning/Ventilation | \$ per year |
| Building Intelligence and Emergency Systems | \$ per year |
| Fire Protection/Essential Services | \$60.00 per year |
| Security | \$ per year |
| Lifts and Escalators | \$ per year |
| Public Address/Music | \$ per year |
| Signs | \$ per year |
| Public Telephones | \$ per year |
| Insurance | \$460.00 per year |
| Pest Control | \$ per year |
| Uniforms | \$ per year |
| Car Parking | \$ per year |
| Child Minding | \$ per year |
| Gardening | \$ per year |
| Cleaning | \$ per year |
| Audit Fees/Accounting/Consulting | \$0.00 per year |
| Management Costs/Administration | \$0.00 per year |
| Maintenance and Repairs | \$ per year |
| Emergency Services Levy | \$1,505.90per year |
| Other – Land Tax | \$ per year |
| Other – Indoor Plant Hire | \$ per year |
| TOTAL | \$11,258.90and as consumed where specified per year |

The Lessee is liable for the full amount of the outgoings.

- The Lessee is liable for a proportion of the outgoings calculated according to the following formula (*if different according to category, provide category and formula in each case*):

6. Margin of profit

- The amount the Lessee is required to pay toward outgoings does not include a margin of profit for the Lessor.
- The amount the Lessee is required to pay towards outgoings includes a margin of profit for the Lessor as follows:

PART 4 – Other monetary obligations

7. Other

- The Lessee will not be liable for any other kinds of monetary obligations.
- The Lessee will also be liable for the following kinds of monetary obligations (*provide details of other kinds of monetary obligations and, if possible, an estimate of the annual cost of complying with those obligations*):

The amount payable by the Lessee for any taxable supply made under the lease on or after 1 July 2000 shall be increased by the *Goods and Services Tax* imposed on or in respect of that taxable supply.

'Taxable supply' includes but is not limited to rent and contains most, if not all, outgoings.

The Lessee will also be liable for goods and services it contracts personally, including telephone, gas, electricity.

The Lessee will be liable for half of the Lessor's legal costs for negotiating and preparing the lease, this Disclosure Statement, and any extension or renewal documents.

The Lessee will be liable for half of the Lessor's mortgagee's costs for consenting to this lease and any extension or renewal documents, plus all the mortgagee's title production costs should the Lessee wish to register.

Should the Lessee wish to register, the Lessee will also be liable for all registration costs, including the cost of preparing a filed plan if required.

The Lessee will be liable for all of the Lessor's legal costs for negotiating and preparing a Deed of Guarantee (if required).

Walkerville Lawn Tennis Club Amendment Schedule

Note: Numbering and referencing of clauses below has been carried out using an original and unamended template

| Clause No | Proposed Amendment | Comments | Recommendation |
|----------------------|---|--|--|
| Item 5 Rent | The Club have requested that the proposed rental of \$1,500 per annum be reduced to a peppercorn amount | The proposed lease fee is consistent with other proposed community lease fees and represents a decrease from the current charge of 17.5% of all income, which has typically been between \$2,700 - \$2,900 annually. It is less than the annual amount that the Tennis Club has been paying and reasonably reflects the cost to the community to administer and manage the lease | Retain the proposed lease fee of \$1,500 |
| Item 7 Permitted use | The Club seek to amend the use from Lawn Tennis Club to Sporting and Recreation Facility | This proposed change in the use term provides a broader scope for the land use, albeit that the built form of the land is that of Lawn Tennis facility and would be unable to be altered without Council approval. The change in use reference will also allow the Club to continue to host minor social events from their club rooms | Accept the change of permitted use to reflect Sporting and Recreation Facility |
| Item 9 Refurbishment | No request for change. | Amended identified by Wallman's and required to address changes requested in clause 11.4 | Amendment supported |

| Clause No | Proposed Amendment | Comments | Recommendation |
|-----------------------------------|---|---|--|
| 2 Dictionary Agreed Consideration | Amendment to the definition to eliminate the reference to Outgoings | Outgoings has its own definition within the Dictionary | Amendment supported as it provides greater clarity to both parties |
| 2 Dictionary Lessee | Amendment to the definition to include the term 'hirers' | The amended term allows provision for the Club to manage occasional hiring of the premises | Amendment supported as it allows for the continuation of an established practice of hiring the premises for minor events and functions |
| 2 Dictionary Lessees Share | Deletion of the definition of Lessee's Share | Amendment required due to template definition being redundant in this lease | Amendment supported |
| 2 Dictionary Outgoings | Deletion of redundant parts of the definition | Amendment required as the terms of the definition are not consistent the Disclosure Statement and the Maintenance Schedule within the lease | Amendment supported. The items in the Disclosure Statement and Maintenance Schedule have been developed with the Club and Council officers |
| 2 Dictionary Payment Date | Amendment of the requirement to pay monthly and establish an annual payment | The amendment as requested will be simpler to administer | Amendment supported |
| 2 Dictionary Rates and Taxes | Amendment to the definition to exclude Council Rates on the land | The Club have argued for the removal of Council Rates and Emergency Services Levy | Exclude Council Rates from the definition but retain provision to pass on the Emergency Services Levy since the Club enjoy exclusive use of the land |
| 2 Dictionary Previous CPI | Deletion of the reference to Previous CPI | The Club have sought a deletion of the term as they request no increases to the lease fee for the term of the lease | Retain the reference to Previous CPI to enable Council to apply the proposed CPI increases to the lease fee |
| 2 Dictionary Review Date | Deletion of the reference to Review Date | The Club have sought the deletion of the term as they | Retain the reference to the Rent Review to enable Council to |

| Clause No | Proposed Amendment | Comments | Recommendation |
|---|---|--|--|
| | | request no reviews to the lease fee | conduct a review of the lease |
| 2 Dictionary Review Method | Deletion of the reference to Review Method | The Club have sought the deletion of the term as they request that no reviews to the lease be carried out | Retain the reference to the Review Method to enable Council to review the lease |
| 6 Term less than five years | Request to delete the whole clause | Given that the Club seeks lease that offers more than five years there is a request to delete this clause in its entirety. | Amendment supported. Clause can be deleted without impacting lease. |
| 7 Rent | Request to alter the requirement to pay in monthly instalments to be an annual payment | An annualised payment requires less administration and is a better outcome for both parties | Amend supported The terms to reflect an annualised payment of rent |
| 8 Rent Reviews | Requesting the deletion of the entire clause (8.1, 8.2, 8.3, 8.4, 8.5, 8.6 and 8.7) covering rent reviews | Removal of this clause will preclude Council from carrying out reviews with an established formula to do so | Retain the clause and the formula outlined for rent review |
| 9 Rates, Taxes and Outgoings 9.1 Liability for Rates and Taxes | Request to delete the clause and for Council to be responsible for all rates, taxes and outgoings | Removal of this clause would preclude Council for passing on any rates or taxes for the property including those. This would include the Emergency Services Levy (ESL) and building insurance. | Amend the clause to relieve the Lessee from payment of council rates but retain requirement to pay 25% of ESL given that the Club sits on 25% of the land title and 50% of the building insurance since this also includes the public toilets. Include a reference to Outgoings and clause 8.2 Power and Utilities |
| 9.2 Payment of Outgoings | Request to delete the clause and for Council to be responsible for Outgoings | Although removal of this clause would relinquish the obligation of the lessee to reimburse Council for the Outgoings assessed | Delete the clause as requested |

| Clause No | Proposed Amendment | Comments | Recommendation |
|-------------------------------|---|--|---|
| | | or levied against the property, all relevant Outgoings that have managed by Club and Council have been captured within other clauses, schedules and the disclosure statement. | |
| 9.3 Lessee's Proportion | Request to delete clause as the clause relates to rates, taxes and outgoings that are assess separate to the property | Removal of this clause does not impact upon the operation of the lease as there are no rates, taxes or outgoings separate to the property | Delete the clause as requested |
| 9.4 Power and Other Utilities | Amend to reflect that Council pays for a share of the electricity consumed for public lighting | The Club have typically applied a formula to calculate the power consumed by Council for public lighting. This addresses that the Club only use electricity during their active months and not throughout the off-season, whilst the public lighting does run all year. It is not feasible to install separate electricity meters. The formula is approximate and would no longer be accurate if LED lighting were to be installed. The Club have now recommended that the lowest cost quarter for electricity would be indicative of the cost of lighting and therefore Council pay that quarter in its entirety and deduct the | Amend clause to reflect that Council will pay the lowest quarterly account when the club is inactive and contribute up to 20% of any other quarterly account for electricity. |

| Clause No | Proposed Amendment | Comments | Recommendation |
|--|---|--|--|
| | | same amount from other quarters. This would not be seasonally adjusted to account for shorter nights over summer. | |
| 10.4 Insurance | Request to amend the clause to note that the Club will reimburse Council 50% of cost of insuring the assets on the site. | The previous lease held by the club has only ever demanded 50% of the cost of insurance for assets on site. Bearing in mind that the Club have only the Clubrooms and maintenance shed with assets inside, whilst Council has a public convenience facility, this is not a significant cost for Council to share | Amend the clause to include notation of the Club's contribution to be 50% of the insurance cost. |
| 10.7 Repay Loans | Request to delete clause | The Club have requested the clause be deleted as there is no loan in place. | Retain the clause as it causes no harm under the current circumstances but allows for the Club to have a loan and for Council to have clarity and protection in managing a loan if required. |
| 10.8 Signs | Request to amend the clause to allow signage that is existing to remain | The Club already has a range of pre-existing signage and rely upon some signage for sponsorship. | Amend the clause so that it is only triggered in relation to new signage and does not impact existing. |
| 11 Insurance 11.1 Lessee must Insure | Request to delete requirement for lessee to provide plate glass insurance on the building | The buildings are insured under Council's assets and as such this requirement is redundant | Delete the clause as requested |
| 13 Assigning, Subletting and Charging 13.4 Hiring out of Premises | Request to amend the clause to allow the lessee to hire out the premises on a short-term basis without Council's consent. | The hiring of the premises has been an established practice of the Club and serves to provide some income. Typically, | Amend the clause to continue to allow hiring for purposes consistent with the Permitted Use |

| Clause No | Proposed Amendment | Comments | Recommendation |
|--|--|--|---|
| | | the Club hire the courts to schools or the clubrooms for small functions. The proposed amendment stipulates that the premises can only be used for the defined Dictionary term for Permitted Use | |
| 16 Damage or Destruction 16.1 Termination for Destruction or Damage | Request to amend the clause to require that Council must apply all insurance proceeds and any other funds required to repair or rebuild the premises as soon as possible | Council's insurance limits the use and application of compensation to that which it is intended to cover. A restrictive clause requiring that Council apply any insurance funds to repair or rebuild is unnecessary and may unreasonably bind Council in the event that there is a dispute with the insurer or other 3 rd party | Retain the clause in its entirety. |
| 17 Redevelopment, Asset Rationalisation and Demolition | Request to delete the entire clause | Council does not have intentions of redeveloping, rationalising or demolishing the premises and the land is protected under a Community Land Management Plan as well. | Delete the clause as requested |
| 19 Rights and Obligations on Expiry 19.2 Handover of Possession | Request to amend requirement to remove and reinstate any alterations or additions so as to protect lessee from being required to remove buildings | Clarification provided to the Club that this provision does not extend to remove buildings but does deal with additions and alterations. | Retain clause as per the standard wording |
| 22 Goods and Services Tax | Request to amend clause so that GST is either included | The Club is not registered as a 'not for profit' | Retain clause as per the standard wording |

| Clause No | Proposed Amendment | Comments | Recommendation |
|--|---|--|---|
| | and absorbed in the rental amount or the clause deleted | organisation' and nor does it hold an exemption, therefore Council is obliged to charge GST exclusive to the rental amount | |
| 23 General 23.2 Costs | Request to delete 23.2.1, 23.2.2 and 23.2.3 which relate to stamp duty, legal costs associated with lease preparation and execution | The Administration agrees that the costs for preparing a community facility lease do not include stamp duty and legal costs associated with lease preparation | Delete clause as requested |
| Annexure B 1.1.2 | Request to amend Special Condition regarding Council's capacity to set maintenance standards on the court surfaces. Request to amend so that it reflects that Council may only require maintenance for club standards | The Club have expressed concern that Council could direct the court surfaces be maintained to national competition standards rather than club standards. | Amend condition to reflect that Council may only require that the courts be maintained to a standard required for club level tennis. |
| Disclosure Statement – Part 3 Outgoings | Request to for Council to be responsible for the cost of Fire Protection, 50% of Building Insurance and remove the cost of Emergency Services Levy (ESL) | The Club seek to reduce the liabilities of the Outgoings and have requested reductions where possible. To this end the Club has requested that the cost of Fire Protection be carried out as part of Council's annual program and the cost be absorbed by Council, that the Building Insurance be reduced to 50% as per the requirement under the previous lease and recognising that that the cost indicated also covers the public | Amend the Disclosure Statement to reduce the cost of Building insurance to 50% of the amount payable and the ESL to 25% but retain the charge of the Fire Protections |

| Clause No | Proposed Amendment | Comments | Recommendation |
|---------------------------------|--|--|----------------------|
| | | toilets and to reduce the ESL to 25% of the total cost as this cost applies to the whole title of land and the Club only occupies 25% of the title | |
| Disclosure Statement Appendix A | Request to amend sections that reference shop with a change to the term facility | The Administration acknowledges that the template document is designed to support retail leases over community facilities. Noting that not all references to the term shop need to be altered as clauses that have nil effect in the lease can remain in place | Amendments supported |

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CORPORATION OF THE TOWN OF WALKERVILLE

(Council)

AND

THE WALKERVILLE LAWN TENNIS CLUB INC

(Lessee)

PORTION OF LAND

COMMUNITY FACILITIES LEASE

WALKERVILLE LAWN TENNIS CLUB

SCHEDULE

| | | | | | |
|---|---|---------------------|----------------------|-----------------------|------------|
| ITEM 1 Premises | The portion of the land comprised in Certificate of Title Volume 5261 Folio 460 being the area delineated in the Plan attached as Annexure A | | | | |
| ITEM 2 Land | The portion of the land comprised in Certificate of Title Volume 5261 Folio 460 being the area delineated in the Plan attached as Annexure A | | | | |
| ITEM 3 Initial Term | Five (5) years commencing on 1 October 2017 (Commencement Date) and expiring at midnight on 30 September 2022 | | | | |
| ITEM 4 Renewal(s) | Five (5) years commencing on 1 October 2022 and expiring at midnight on 30 September 2027 | | | | |
| ITEM 5 Rent | One thousand five hundred dollars (\$1,500.00) per annum (exclusive of GST) (subject to review pursuant to clause 7) | | | | |
| ITEM 6 Rent Review Dates and Review Method | <table style="width: 100%; border: none;"> <tr> <td style="width: 60%;">Review Dates</td> <td style="width: 40%;">Review Method</td> </tr> <tr> <td>Annually on 1 October</td> <td>CPI Review</td> </tr> </table> | Review Dates | Review Method | Annually on 1 October | CPI Review |
| Review Dates | Review Method | | | | |
| Annually on 1 October | CPI Review | | | | |
| ITEM 7 Permitted Use | Sporting and recreational facility | | | | |
| ITEM 8 Public Risk Insurance | Twenty Million Dollars (\$20,000,000.00) | | | | |
| ITEM 9 Refurbishment | At the expiry or earlier termination of this Lease in accordance with clause 11.4 | | | | |
| ITEM 10 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. | | | | |

BETWEEN

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

AND

THE WALKERVILLE LAWN TENNIS CLUB INC ABN 43 516 536 926 of c/- 6/14 Creswell Court, Gilberton 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 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 20).

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 7.3.

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.

Initial Term means the initial term of this Lease commencing on the Commencement Date described in Item 3.

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.

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.

Payment Date means the Commencement Date and the first day of October 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 Premises and includes water and sewer charges, emergency services levy (on a single holding basis), but excludes council rates.

Renewal Term means the term (if any) of renewal or extension in Item 4.

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 10.

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

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

- (a) who 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 10 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. RENT

6.1 Payment of Rent

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

6.2 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.

7. RENT REVIEWS

7.1 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.

7.2 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).

7.3 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.

7.4 Rent Pending Determination

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

7.4.2 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.

7.5 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.

7.6 No Decrease in Rent

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

7.7 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 7.

8. RATES, TAXES AND OUTGOINGS

8.1 Liability for Rates and Taxes

Subject to clause 8.2 the Council is responsible for all Outgoings, Rates and Taxes levied, assessed or charged in respect of the Premises, however the Lessee is responsible for and will pay or reimburse the Council 25% of the Emergency Services Levy payable in respect of the Land and.

8.2 Power and Other Utilities

8.2.1 Subject to clause 8.2.4 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.

8.2.2 If there is no separate meter for recording or measuring the services and utilities consumed on or from the Premises, then the other party may install the necessary meters at its own cost.

8.2.3 Without limiting the generality of this clause 8.2, the Lessee will comply in all respects with the *Electricity (General) Regulations 1997* and any other applicable electricity laws.

8.2.4 Notwithstanding clause 8.2.1, the Council will pay all costs electricity for the quarter in which consumption was the lowest during any twelve (12) month period, being the June to September quarter, and that Council also pays the same amount as this lowest quarter for the subsequent 3 quarters. The club will pay the balance above the councils basic consumption in the other 3 quarters. This recognises that the club is in recess in the June to September quarter and uses no power and the Council always uses approximately the same amount of power every quarter for security and public toilet lighting.

9. USE OF PREMISES

9.1 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:

9.1.1 residential purposes; or

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

9.2 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:

9.2.1 for the Council; or

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

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

9.3 Use of Facilities

9.3.1 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.

9.3.2 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.

9.4 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:

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

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

9.5 Alcohol and Gaming

9.5.1 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*.

9.5.2 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.

9.5.3 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.

9.6 Not to Damage

9.6.1 The Lessee must take reasonable care not to damage nor allow visitors on the Premises to damage any neighbouring property.

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

9.7 Repay Loans

9.7.1 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**).

9.7.2 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 18 of this Lease.

9.8 Signs

The Lessee must not place any new 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:

9.8.1 are approved by the Council; and

9.8.2 comply with any relevant Statutory Requirements.

9.9 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:

9.9.1 any electrical, gas powered or other machinery or equipment that may pose a danger, risk or hazard;

9.9.2 any chemicals or other dangerous substances that may pose a danger, risk or hazard; or

9.9.3 any heavy equipment or items that may damage the Premises or Building.

9.10 Fire Precautions

The Lessee must, at its own cost:

9.10.1 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

9.10.2 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.

9.11 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.

9.12 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.

10. INSURANCE

10.1 Lessee must Insure

The Lessee must keep current during the Term:

10.1.1 public risk insurance for at least the amount in Item 8 (or any other amount the Council reasonably requires) for each claim;

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

10.1.3 other insurances required by any Statutory Requirement or which the Council reasonably requires.

- 10.1.4 reimbursement of 50% of the annual Building Insurance costs incurred by the Council

10.2 Requirements for Policies

Each policy the Lessee takes out under this clause 10 must:

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

10.3 Evidence of Insurance

The Lessee must give the Council certificates evidencing the currency of the policies the Lessee has taken out under this clause 10. During the Term the Lessee must:

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

10.4 Insurance Affected

- 10.4.1 The Lessee must not do anything which may:
 - (a) prejudice any insurance of the Premises or the Building; or
 - (b) increase the premium for that insurance.
- 10.4.2 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.

11. REPAIR AND MAINTENANCE

11.1 Repair

- 11.1.1 The Lessee must keep, maintain, repair and replace the Premises, the Lessee's Equipment and any Building Services situated within the Premises and which exclusively services the Premises in good repair.
- 11.1.2 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.

- 11.1.3 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.
- 11.1.4 If the Maintenance Schedule makes the Lessee responsible for any Maintenance, the Lessee must, at the same time as providing a copy of any documentation required by clause 13, provide a report to the Council setting out the amount of money which the Lessee proposes to set aside in the following year for Maintenance.
- 11.1.5 The Lessee must, when requested to do so by the Council, provide the Council with a report setting out:
- (a) all projected items of maintenance, the approximate date when each item of maintenance is likely to be required and the estimated cost; and
 - (b) the amount of money currently set aside by the Lessee for Maintenance.

11.2 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.

11.3 Alterations by Lessee

- 11.3.1 The Lessee must not carry out any alterations or additions to the Premises without Council's consent.
- 11.3.2 The Lessee must provide full details of the proposed alteration and additions to the Council.
- 11.3.3 The Council may impose any conditions it considers necessary if it gives its approval, including requiring the Lessee to obtain the Council's consent to any agreements that the Lessee enters into in relation to the alterations or additions.
- 11.3.4 The Lessee must carry out any approved alterations and additions:
- (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.
- 11.3.5 Unless otherwise agreed in writing between the parties, all alterations and additions to the Land or the Premises made pursuant to this clause will be or become the property of the Council.
- 11.3.6 The Lessee 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.

11.4 Refurbishment, Re-fitting and Redecoration

The Lessee must refurbish, re-fit and redecorate the Premises on or before each of the dates specified in Item 9 to the following specification:

- 11.4.1 clean and repair all surfaces to be redecorated;
- 11.4.2 paint (with at least two coats) or wallpaper, stain, varnish or polish each surface to be redecorated according to the previous treatment of that surface.

11.5 Cleaning

The Lessee must:

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

12. ASSIGNING, SUBLETTING AND CHARGING

12.1 Assignment

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

- 12.1.1 the proposed assignee does not change the Permitted Use;
- 12.1.2 the proposed assignee is able to meet the financial obligations under this Lease; and
- 12.1.3 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.

12.2 Subletting

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

12.3 Charging

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

12.4 Hiring out of Premises

The Lessee 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**).

12.5 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 12.

13. LESSEE GOVERNANCE

13.1 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.

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

14. COUNCIL'S OBLIGATIONS AND RIGHTS

14.1 Quiet Enjoyment

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

14.2 Right to Enter

14.2.1 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 14.2.

14.2.2 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.

14.2.3 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.

14.3 Emergencies

In an emergency the Council may:

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

14.4 Works and Restrictions

14.4.1 The Council may:

- (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.

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

14.5 Right to Rectify

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

15. DAMAGE OR DESTRUCTION

15.1 Termination for Destruction or Damage

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

- (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.

15.1.2 If the Council gives a notice under clause 15.1.1(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).

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

15.2 Reduction or Abatement of Rent

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

- (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.

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

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

16. RENEWAL

16.1 If a right of renewal has been granted to the Lessee as described in Item 4 and the Lessee wishes to exercise that right of renewal, then the Lessee must serve a written notice on the Council not less than six (6) months and not more than twelve (12) 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 must renew this Lease for the first Renewal Term on the terms in this Lease (except this subclause) commencing immediately after the Initial Term expires.

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

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

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

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

17. RIGHTS AND OBLIGATIONS ON EXPIRY

17.1 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.

17.2 Handover of Possession

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

- 17.2.1 remove all of the Lessee's Equipment and repair any damage caused by such removal;
- 17.2.2 if required by the Council, remove and reinstate any alterations or additions made to the Premises by the Lessee after the Commencement Date;
- 17.2.3 refurbish the Premises as required under clause 11.4;
- 17.2.4 leave the Premises in a clean, tidy and safe condition; and
- 17.2.5 complete any repairs which the Lessee is obliged to carry out under this Lease.

17.3 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.

17.4 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:

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

18. BREACH

18.1 Payment Obligations

18.1.1 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.

18.1.2 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.

18.2 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.

18.3 Council's Rights on Breach

18.3.1 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.

18.3.2 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.

18.4 Default, Breach and Re-Entry

In the event that:

18.4.1 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);

18.4.2 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;

18.4.3 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;

18.4.4 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);

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

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

18.4.7 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.

18.5 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 18.

18.6 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.

18.7 Repudiation and Damages

18.7.1 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.

18.7.2 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.

18.7.3 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.

18.7.4 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.

18.7.5 The rights of the Council under this clause 18.7 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.

18.8 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.

19. INDEMNITY AND RELEASE

19.1 Risk

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

19.2 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:

- 19.2.1 any act or omission of the Lessee;
- 19.2.2 the overflow or leakage of water or any other harmful agent into or from the Premises;
- 19.2.3 any fire on or from the Premises;
- 19.2.4 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;
- 19.2.5 a breach of this Lease by the Lessee; or
- 19.2.6 the Lessee's use or occupation of the Premises.

19.3 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.

19.4 Indemnities are Independent

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

20. GOODS AND SERVICES TAX

- 20.1 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:
 - 20.1.1 the Agreed Consideration for that supply is exclusive of GST;
 - 20.1.2 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
 - 20.1.3 the Lessee shall pay the increased Agreed Consideration on the due date for payment by the Lessee of the Agreed Consideration.
- 20.2 Where the Agreed Consideration is to be increased to account for GST under this clause 20, the Council shall, on or before the date on which the Agreed Consideration is payable, issue a tax invoice to the Lessee.
- 20.3 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.

21. GENERAL

21.1 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.

21.2 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.

21.3 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.

21.4 Exercise of Power

21.4.1 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.

21.4.2 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.

21.5 Notice

21.5.1 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.

21.5.2 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).

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

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

21.6 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.

21.7 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, were made or given or relied upon.

21.8 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

THE COMMON SEAL of)
CORPORATION OF THE TOWN OF)
WALKERVILLE was hereunto affixed)
in accordance with its Constitution and)
in the presence of:)

.....
Seal Holder

.....
Seal Holder

LESSEE

THE COMMON SEAL of)
THE WALKERVILLE LAWN TENNIS)
CLUB INC was hereunto affixed in)
accordance with its Constitution and in)
the presence of:)

.....
Seal Holder

.....
Seal Holder

SPECIAL CONDITIONS

1. In relation to the maintenance of the tennis court surfaces and fixtures associated with the use of the tennis court surfaces (**Tennis Court 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 Club must maintain the Tennis Court Surfaces to a reasonable standard required for club lawn tennis.
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 C

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 | <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 (based on Council's capital works program and budget priorities) |
| Doors/locking mechanisms | <ul style="list-style-type: none"> Key replacement Provide key to Council Keep doors operational – minor repair works (eg if door hinge/lock broken, repair/replace locks, door coverings) Replace damaged locks | <ul style="list-style-type: none"> Replace at end of natural life Major works (eg replacement of damaged doors) to be carried out by Council (based on Council's capital works program and budget priorities unless urgent or a safety hazard) and only if not caused by failure of Lessee to maintain |
| Walls | <ul style="list-style-type: none"> Minor repair periodically Remove graffiti | <ul style="list-style-type: none"> Maintain structural stability |
| Paint finishes | <ul style="list-style-type: none"> Touch up where damaged Repaint as required as above | <ul style="list-style-type: none"> Nil responsibility |
| 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 |
| 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 |
| Building structural maintenance (includes foundation, salt damp course, window frames, exterior walls, verandah posts, roof structure, gutters, exterior steps, stairs, guard / hand rails, ramps, ceilings and interior walls) | <ul style="list-style-type: none"> Nil responsibility | <ul style="list-style-type: none"> Full responsibility (where not as a result of mismanagement and maintenance of Lessee) |

2. Building Internal

| Item | Lessee | Council |
|---|--|--|
| Water, sewer and gas piping (plumbing?) Water/waste services – associated fittings Grease arrestors | <ul style="list-style-type: none"> Keep free from blockages – unblock drains Repair minor damage Minor works Clean fittings, eg taps, toilets, sinks – replace washers | <ul style="list-style-type: none"> Replace at end of useful life Major works (based on Council's capital works program and budget priorities unless urgent or a safety hazard) and only if not caused by failure of Lessee to maintain |
| Hot water system | <ul style="list-style-type: none"> Responsibility for minor repairs | <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) |
| 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 |
| 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"> Initial purchase, insurance, maintenance and repair including all testing and servicing Running costs | <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) |
| Electrical services, switchboards, distribution boards and power lighting circuits | <ul style="list-style-type: none"> Monitor and report faults | <ul style="list-style-type: none"> Full responsibility for repair and replacement |
| Lighting fixtures | <ul style="list-style-type: none"> Replace lights and globes, ballasts and fuses | <ul style="list-style-type: none"> Nil responsibility Repair/replace wiring connections |
| Vinyl/concrete/tiled/other floors | <ul style="list-style-type: none"> Maintain in good order | <ul style="list-style-type: none"> Nil responsibility |
| Internal walls and ceilings | <ul style="list-style-type: none"> Clean, keep free of mould/grime Repair damage caused by use Repair minor cracking, replace, repaint as required | <ul style="list-style-type: none"> Replacement responsibility for walls as required |
| 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"> At lessee's cost | <ul style="list-style-type: none"> To arrange |
| General cleaning | <ul style="list-style-type: none"> Full responsibility | <ul style="list-style-type: none"> Nil responsibility |
| Pest control | <ul style="list-style-type: none"> Full responsibility | <ul style="list-style-type: none"> Nil responsibility |

3. External Surfaces

| Item | Lessee | Council |
|---|---|--|
| Line marking 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 (1/2 of brick building) | <ul style="list-style-type: none"> • Maintain and minor repairs | <ul style="list-style-type: none"> • Responsible for major repairs |
| 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 |
| Trees and vegetation outside leased area | <ul style="list-style-type: none"> • Nil responsibility | <ul style="list-style-type: none"> • Full responsibility |
| Underground mains water and sewerage pipes to connection point with the Premises | <ul style="list-style-type: none"> • Nil responsibility | <ul style="list-style-type: none"> • Full responsibility |

DISCLOSURE STATEMENT

Premises: Walkerville Lawn Tennis Club, Cnr Stephen Tce and Creswell Ct,
Gilberton SA 5081

Lessor: **CORPORATION OF THE TOWN OF WALKERVILLE** ABN 49
190 949 882 of 66 Walkerville Terrace, Gilberton SA 5081

Lessee: **THE WALKERVILLE LAWN TENNIS CLUB INC** ABN 43 516
536 926 of C/- 6/14 Creswell Court, Gilberton SA 5081

IMPORTANT NOTICE

EXCLUSION OF WARRANTY OF FITNESS FOR PURPOSE

Retail and Commercial Leases Act 1995: Section 18

Retail and Commercial Leases Regulations 2010: Regulation 6

**THE LESSOR DOES NOT WARRANT THAT THE PREMISES
THAT YOU ARE ABOUT TO LEASE WILL, FOR THE
DURATION OF YOUR LEASE, BE STRUCTURALLY
SUITABLE FOR THE TYPE OF BUSINESS THAT YOU
INTEND TO CARRY ON.**

DISCLOSURE STATEMENT UNDER SECTION 12 OF *RETAIL AND COMMERCIAL LEASES ACT 1995*

INFORMATION FOR LESSEES

Please read the following information carefully.

What is a lease?

A lease is a very important document. It is a legally binding contract between the Lessor (landlord) and the Lessee (tenant). It sets out the rights and obligations of the Lessor and the Lessee.

A document that binds the Lessee to enter into a lease or to take a shop on lease for a renewed term should be treated as if it were the lease.

What should I look for in a lease?

The main features to consider are -

- the term of the lease;
- whether there is an option to renew or extend the lease (and the method of exercising any such option);
- the rent and the basis for rent reviews;
- the amounts that the Lessee will have to pay in addition to rent eg fit out costs, maintenance and repair costs and shared operating expenses;
- the consequences of breaching a term of the lease.

Make sure you read the whole document and understand the obligations it will place on you, especially the extra charges in addition to rent that you will have to pay.

If the lease is a sublease, you should seek information about the Lessor's rights and obligations under the headlease that are relevant to the lease of the shop.

What information is the Lessor required to give me?

The Lessor must give you a copy of the proposed lease and this disclosure statement. The disclosure statement must contain the matters set out in section 12 of the *Retail and Commercial Leases Act 1995*.

What should I do before signing a lease or other binding document?

Do not sign until you understand exactly what your obligations under the lease will be.

Before signing a lease or other binding document, you should obtain independent legal and financial advice.

- You should discuss the lease (or any agreement for a lease) and the disclosure statement with your own lawyer or leasing adviser.
- You should seek advice about the financial commitments under the lease from your own accountant or recognised financial or business adviser.
- You should also seek advice from an association representing the interests of the Lessees.

Before signing a lease or other binding document, oral representations made by the Lessor or the Lessor's agent on which you have relied should be reduced to writing and signed by or on behalf of the Lessor.

Before signing a lease or other binding document, the Lessee should sign an acknowledgment of receipt of the disclosure statement.

DRAFT

1 - Details of facility

Address: Cnr Stephen Tce and Creswell Ct, Gilberton SA 5081

Lettable area: 2,240m

The facility may only be used for: Sporting and Recreation Facility

2 - Term of lease

Term of lease: Five (5) years

3 - Renewal or extension of lease

There is no right to renew or extend the term of the lease.

The lease gives a right to renew or extend the term of the lease as follows:

One right to renew for five (5) years

4 - Access to facility

Hours during which the Lessee will have access to the facility outside trading hours: All hours

Date on which the facility will be available for occupation: ?

5 - Monetary obligations

The Lessee's obligations to pay rent, to pay or reimburse outgoings, to make or reimburse capital expenditure and any other monetary obligations imposed on the Lessee are set out in Appendix A.

6 - Retail shopping centre details

The shop is in a retail shopping centre within the meaning of the *Retail and Commercial Leases Act 1995*. See Appendix B for details.

The shop is not in a retail shopping centre within the meaning of the *Retail and Commercial Leases Act 1995*.

7 - Consequences of breach

The Lessee has no right to early termination of the lease, and such early termination will be a breach of the lease. The legal consequences of early termination of the lease by the Lessee are as follows:

- (a) The Lessee is liable for all the rent and other moneys payable under the lease until the end of the agreed term of the lease.
- (b) The Lessee is also liable for all losses, costs and damages suffered by the Lessor that result from early termination.
- (c) The Lessor may have remedies as set out below.

The legal consequences of other breaches as set out in clause # of the lease (but the Lessor's legal remedies are not limited to those clauses of the lease) are as follows:

- (a) The Lessee is liable for all the rent and other moneys payable under the lease until the end of the agreed term of the lease.
- (b) The Lessee is also liable for all losses, costs and damages suffered by the Lessor that result from early termination.

- (c) The Lessor may attempt to remedy the breach and then recover the costs from the Lessee.
- (d) The Lessor may obtain a court order for specific performance of the lease.
- (e) The Lessor may obtain an injunction against a continuing or persistent breach.
- (f) The Lessor may re-enter and terminate the lease.
- (g) The Lessor may sue to recover any rent or other money then due and unpaid.
- (h) The Lessee may be liable to pay damages and costs (including legal costs) to the Lessor.
- (i) The Lessee may be liable to pay interest to the Lessor.
- (j) The Lessor may distrain against the goods of the Lessee.
- (k) The Lessor may have recourse to any security bond held from the Lessee.

The above is not a complete list of the consequences of breach and does not limit the Lessor's rights under the lease or otherwise. Please refer to the lease and seek independent legal advice.

8 - Warnings

Oral representations made by the Lessor or the Lessor's 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 this lease.

The Lessee should obtain independent legal and financial advice before entering into this lease.

Date:

Signature of Lessor:

Name of Lessor: **CORPORATION OF THE TOWN OF WALKERVILLE** ABN 49 190 949 882

Address of Lessor: 66 Walkerville Terrace, Gilberton SA 5081

Acknowledgement of receipt

I acknowledge receipt of this Disclosure Statement including:

- Appendix A – Monetary obligations under lease
- Appendix B – Retail shopping centre details
- Attachment – Shop fitting or refitting obligations
- Attachment – Fixtures, plant or equipment obligations
- Attachment – Sinking fund obligations
- Attachment – Proposed changes to shopping centre
- Attachment – Current tenant mix
- Attachment – Proposed changes to current tenant mix
- Attachment – Details of tenant association

Date:

Signature of Lessee (**NOTE THE EXCLUSION OF WARRANTY BELOW**):

.....

Name of Lessee: **THE WALKERVILLE LAWN TENNIS CLUB INC** ABN 43 516 536 926

Address of Lessee: C/- 6/14 Creswell Court, Gilberton SA 5081

ATTENTION - IMPORTANT NOTICE

EXCLUSION OF WARRANTY OF FITNESS FOR PURPOSE

Retail and Commercial Leases Act 1995: Section 18

Retail and Commercial Leases Regulations 2010: Regulation 6

THE LESSOR DOES NOT WARRANT THAT THE PREMISES THAT YOU ARE ABOUT TO LEASE WILL, FOR THE DURATION OF YOUR LEASE, BE STRUCTURALLY SUITABLE FOR THE TYPE OF BUSINESS THAT YOU INTEND TO CARRY ON.

APPENDIX A: MONETARY OBLIGATIONS UNDER LEASE**PART 1 – RENT****1. Base rent**

The base rent payable for the premises is or is calculated as follows: One thousand five hundred dollars (\$1,500.00) (GST exclusive) per annum

2. Basis on which base rent may be changed

The base rent may be changed on the following basis: CPI Review annually

3. Other rent

Other rent payable for the facility is or is calculated as follows: Nil

PART 2 – CAPITAL EXPENDITURE**4. Permissible obligations (section 13 of *Retail and Commercial Leases Act 1995*)**

The Lessee will be liable for the following kinds of capital expenditures:

- to pay or reimburse the cost of making good damage to the premises arising when the Lessee is in possession or entitled to possession of the premises
- to fit or refit the shop as set out in the attachment marked "Shop fitting or refitting obligations" (*The attachment must include sufficient details to enable the Lessee to obtain an estimate of the likely cost of complying with the obligation*)
- to provide fixtures, plant or equipment as set out in the attachment marked "Fixtures, plant or equipment obligations" (*The attachment must include sufficient details to enable the Lessee to obtain an estimate of the likely cost of complying with the obligation*)
- to contribute to a sinking fund to cover major items of repair or maintenance as set out in the attachment marked "Sinking fund obligations" (*The attachment must include reasonable details of the Lessee's obligations*)

PART 3 – OUTGOINGS**5. Categories and estimate of annual liability**

The Lessee will be liable to pay or reimburse outgoings as follows:

| Category of outgoings | Estimate of Lessee's annual liability |
|---|--|
| Local Government Rates and Charges | \$Nil per year |
| Electricity | \$As per agreed formula per year |
| Gas and Oil | \$As consumed per year |
| Water and Sewerage Rates and Charges | \$As consumed per year |
| Sewerage Disposal and Sullage | \$As consumed per year |
| Energy Management Systems | \$ per year |
| Air Conditioning/Ventilation | \$ per year |
| Building Intelligence and Emergency Systems | \$ per year |
| Fire Protection/Essential Services | \$60.00 per year |
| Security | \$ per year |
| Lifts and Escalators | \$ per year |
| Public Address/Music | \$ per year |
| Signs | \$ per year |
| Public Telephones | \$ per year |
| 50% of Insurance of building | \$230.00 per year |
| Pest Control | \$ per year |
| Uniforms | \$ per year |
| Car Parking | \$ per year |
| Child Minding | \$ per year |
| Gardening | \$ per year |
| Cleaning | \$ per year |
| Audit Fees/Accounting/Consulting | \$0.00 per year |
| Management Costs/Administration | \$0.00 per year |
| Maintenance and Repairs | \$ per year |
| Emergency Services Levy | \$376.47 per year |
| Other – Land Tax | \$ per year |
| Other – Indoor Plant Hire | \$ per year |
| TOTAL | \$666.47 and as consumed where specified per year |

The Lessee is liable for the agreed proportion of the outgoings.

- The Lessee is liable for a proportion of the outgoings calculated according to the following formula (*if different according to category, provide category and formula in each case*):

6. Margin of profit

- The amount the Lessee is required to pay toward outgoings does not include a margin of profit for the Lessor.
- The amount the Lessee is required to pay towards outgoings includes a margin of profit for the Lessor as follows:

PART 4 – Other monetary obligations

7. Other

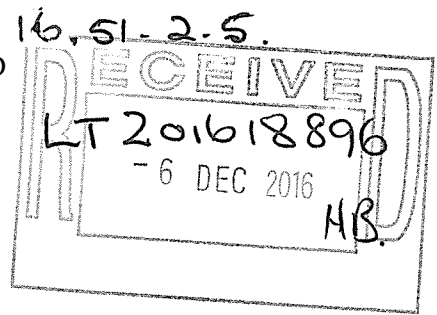
- The Lessee will not be liable for any other kinds of monetary obligations.
- The Lessee will also be liable for the following kinds of monetary obligations (*provide details of other kinds of monetary obligations and, if possible, an estimate of the annual cost of complying with those obligations*):

The amount payable by the Lessee for any taxable supply made under the lease on or after 1 July 2000 shall be increased by the *Goods and Services Tax* imposed on or in respect of that taxable supply.

'Taxable supply' includes but is not limited to rent and contains most, if not all, outgoings.

The Lessee will also be liable for goods and services it contracts personally, including telephone, gas, electricity.

Should the Lessee wish to register, the Lessee will also be liable for all registration costs, including the cost of preparing a filed plan if required.



The President
Walkerville Lawn Tennis Club Inc.
PO Box 28
Walkerville SA 5081
Phone: 0408 855 442
Email: runder@adam.com.au

4 December 2016

Heather Barklay
General Manager
Town of Walkerville
66 Walkerville Terrace
Gilberton SA 5081

Subject: Walkerville Lawn Tennis Club – New Lease

Dear Heather,

Thankyou for your letter on this matter of 14th October 2016 and our subsequent meeting to discuss the lease on 2nd November.

As an outcome of our meeting, I provide the following further information as requested specifically in relation to the lease fee.

The Club has requested that the lease fee be a peppercorn rent in the new lease and the following is the reasons.

Up to 1997

Historically, the tennis club paid a peppercorn rental on the lease up until 1997.

1998 to 2010 lease

In 1998, Council assisted the Club by providing new backstops and an irrigation system. The cost of this work was approximately \$30,000 to be paid back by the Club in the form of a levy on top of the peppercorn rent for the 10 year term of the lease. As a result of this, from the commencement of the then newly revised lease in 1999 the all inclusive rent became \$1,500 per annum or 17.5% of gross earnings whichever was the greater.

2011 to 2016 lease

In 2011 as part of the negotiations for the next lease commencing in 2011, the Club asked for a simpler rent calculation to be used and queried whether the levy was still appropriate. However in response, Councils Executive External Relations & Finance, Lyndon Prior, indicated that the rent level of \$1,500 per annum or 17.5% of gross earnings would remain for the new lease for 2011-2016. He also stated that "at the end of that 5 year lease, should a new lease be entered into between the Council and the Club, the rent will then be negotiated

WALKERVILLE LAWN TENNIS CUB INC

President Rick Underdown
0408855442
Secretary Tony Cook
83636681
PO Box 28
Walkerville 5081

13 March 2017

Heather Barclay
General Manager
Town of Walkerville
66 Walkerville Terrace
GILBERTON SA 5081

Dear Heather,

RE: LEASE TO WALKERVILLE LAWN TENNIS CLUB

The Club received a draft of the proposed lease document between the Corporation of the Town of Walkerville and The Walkerville Tennis Club Inc (**the Club**) and was asked to provide some comments on the draft document provided.

The form of the lease document would appear to be based on Wallmans standard commercial lease document used for shops or offices either as standalone or part of a multi-tenanted facility. There are many provisions which are not applicable to the circumstances of the lease to a community organisation and should be deleted or substantially changed.

It should be noted that the area which is leased to the Club is only part of a much larger land title which extends to the River Torrens and includes part of the Linear Park.

The Club was also provided with a Disclosure Statement under the Retail and Commercial Leases Act, 1994.

That Disclosure Statement indicates amounts that the Club is required to pay for certain outgoings about which comment is made below.

It may well be that the lease arrangement is subject to the provisions of the Retail and Commercial Leases Act and a Standard Lease and Disclosure Statement have been provided.

The Club makes the following comments about provisions in this draft lease document.

Premises – Plan

The Premises are defined by reference to a plan attached to the Lease as Annexure "A" which appears satisfactory.

and agreed at that time, taking into account the benefit of the facility to the community”.

We are now at that point in time at the end of the 2011-2016 lease and negotiating the new lease and rental fee.

The Club holds that the original cost for the backstops and watering system has been adequately covered by the higher lease fee over the 15 years since the original agreement was entered into. It was never intended that the levy on the lease be a permanent arrangement.

We have not attempted to document precisely how much has been paid, but between 1999 and 2015 we have been paying more than \$1,500 per year and up to \$2,900 per year.

Proposed new lease from 1st October 2016

The Club asks that Council recognize that it has now adequately covered the cost of the 1998 improvements, and we request that in the new lease we revert to a peppercorn level of rent.

The Club also asks Council to recognize that we are a club with a relatively high proportion of senior (in age) members and our active sport provides opportunities to play tennis and socialize and complements government policies for seniors' health and wellbeing.

The Club is run by volunteers and all revenue raised through membership subscriptions and fund raising goes towards buying materials for maintaining the lawn tennis courts, power, water, insurance and tennis balls as well as the lease payment.

We look forward to further discussions on the lease fee and other matters as we work towards a new lease.

In relation to current community consultation on the Community Land Management Plan, I discussed this with you briefly and we agreed there is no impact on the tennis club. Therefore we do not intend to provide a written response.

Regards,



Rick Underdown
President
Walkerville Lawn Tennis Club

Term

It is noted that the term is for 5 years but a Commencement Date has not been inserted. The previous Lease expired on 30 September 2016. We suggest that the lease start from 1 October 2016 as the previous lease term expired on 30 September 2016.

Right of Renewal

It is noted that there is one right of renewal for a period of 5 years which is agreed. There is no provision as to what is to happen about the rent review upon the renewal. It may be that that is intended to be inserted in Item 6 of the Schedule with new dates.

The Club would like the rent to remain fixed for the further 5 year term at the same amount as the rent for the current term referred to below.

Rent

The rent is stated to be \$1,500.00 per annum payable monthly.

Up to now rent has been paid annually which is preferred.

The Club made a submission to the Council that the rent should be reduced and should only be a "peppercorn" rent given that it is a community organisation. No response has been received from the Council to that submission, although it is noted that a provision for further rent in the previous lease arrangement has been deleted.

Rent Reviews

The Club would like to dispense with rent reviews and believes that the rent fixed should remain the same throughout the term of the lease and the right of renewal.

Rates, Taxes and Outgoings

The Lease contains a provision for the Club to pay certain rates and taxes and other outgoings levied against the premises. The Outgoings are defined in the "Dictionary" Clause 2 but the majority of those Outgoings are not applicable to the Club premises. To certainty and ensure that there was not some claim which could arise from a change in the situation later we would like that provision deleted.

Although there is a provision in the existing lease that the Club is to pay rates but it is entitled to seek a rebate of between 50% and 100% of the rates, the practice has been that the Council has not charged any Council rates to the Club. No payment has ever been requested or made. No application has been made for a rebate in respect of those rates. The provision about payment of rates should be deleted.

The draft lease document contains a provision for some apportionment of rates and outgoings referred to as the Lessee's proportion (clause 9.3) and see the definition of "Lessee's Share". The reference to the "share" being determined in accordance with guidelines published by the Australian Property Institute is clearly only applicable to a built

form with shops or offices and not applicable to these premises which occupy part of an Open Space area.

If the provision about payments of rates and outgoings are deleted then the definition of "Lessee's Share" and the apportionment provision Clause 9.3 should also be deleted.

The rates and taxes include, by definition, any SA Water Rates and Emergency Services Levy and Land Tax. The Club has paid SA Water rates for its meter and for water usage but has not paid any Council rates or Emergency Services Levy although again there was provision in the previous lease for the Club to pay these. The leased land may be land which is not subject to Land Tax in any event.

The Disclosure Statement refers to the Emergency Services Levy as \$1,505.90 per annum.

It is not clear whether the amounts for rates and taxes inserted in the Disclosure Statement are only the proportion of the rates and taxes applicable to the Club's leased land or the whole of the land in the title.

In any event any requirement for the Club to pay Council Rates, Water Rates, other than usage, or ESL beyond what it now pays would impose additional occupancy costs which the Club could not afford. The provision about paying for other taxes than water usage should be deleted.

Insurance

Under the terms of the previous Lease, the Club had to pay Council 50% of the insurance premium on the building. The plate glass cover is part of the building insurance. The Club had to take out plate glass (although this was part of the building insurance), and contents insurance as well as \$10 million public liability insurance.

Given the nature of the premises the plate glass insurance should be taken out as part of the building insurance. There should not be any separate policy taken out by the Club.

Those provisions are not reflected in the current Lease which requires the Club to pay the full building insurance premium. That provision should be amended to reflect the previous arrangement.

It is noted that the Public Risk Insurance Cover is increased from \$10m to \$20m.

Repairs and Maintenance

The Lease should reflect the provisions of the previous Lease which were set forth in Appendix "A" to that previous Lease. Each of the parties had to be responsible for certain items.

The Council has arranged for testing and tagging of all electrical plant and equipment but has billed the Club for that charge. The Club would prefer that the cost be part of the rent even if an increased rental is paid. A Club representative has to open the Clubhouse at appropriate times to allow that inspection to occur.

Permitted Use

The previous Lease stated that the permitted use was a Sporting and/or Recreational Facility". The new Lease limits this to purely a "Lawn Tennis Club". The Club believes that the wider use in the previous lease should be inserted.

Hiring Out

Clause 3.5 of the previous Lease gave the Club had the right to hire out the facility to other persons or bodies on a casual or seasonal basis. Although the Council could set conditions and fees, it never has done so.

Under the proposed lease, clause 14.4, the Club is prohibited from hiring out or parting with possession of the premises without Council's consent.

The Club does hire out the courts to various persons on a casual basis or to schools for use during a season for school tennis events and occasionally the Clubhouse is let out for a private function. The Club should not have to ask the Council's consent for each casual or seasonal hiring.

The provision in the previous Lease should be inserted.

Damage or Destruction

The clause again reflects a standard shopping centre or commercial office lease arrangement with a significant building.

With the current circumstances it might be possible that the Clubhouse or the shed is destroyed by fire. The lease contemplates that the Buildings will be insured. The Council should be under an obligation to apply the insurance money to reinstate the damaged premises as quickly as possible.

It is unlikely that either the Club or the Council would want to terminate the Lease. The provisions in this Lease are just not applicable to the current circumstances.

Redevelopment

Clause 17 permits the Council to give 6 months' notice for a redevelopment of the premises. That is a provision in the Retail and Commercial Leases Act designed for shopping centre developers to make some major changes to the shopping complex.

The Lease permits the landlord to give 6 months' notice to terminate the Lease.

There was no such clause in the previous lease. That provision is not applicable in this Lease and should be deleted.

Expiration of the Term

Clause 19.2 refers to the Club removing or reinstating any alterations made to the leased premises by it as Lessee if required by the Council.

The Club itself (with grants) constructed the Clubrooms at these premises. Whilst the Clubhouse has become a fixture on the real estate, there should be not possible argument that the Club is required to remove the improvements it has made. The Clause should make it clear that the Club should not be required to remove the improvements, being the Clubhouse and sheds at the end of the Lease. That removal would be a significant cost to the Club which it should not have to bear.

The Club should only be required to remove its own loose equipment located at the premises.

Legal Costs

Although the previous Lease also contained a provision which enabled the Council to seek certain legal costs for the preparation of the Lease, the Council did not ask the Club to pay any charge towards the legal costs.

The clause relating to the Club to reimburse Council for one half of the preparatory costs and any costs associated with the extension of the Lease should be deleted. (There is now no stamp duty payable upon leases).

Annexure "B" Special Conditions Clause 1.2

This clause enables the Council to set maintenance standards with respect to the tennis court surfaces. The question of what standards might apply should not be left for the Council to determine. There may well be standards set for international matches. The Club obviously has an interest in maintaining the court surfaces to an appropriate level for club use. It does not want the Council to interfere and seek to impose some other level.

Maintenance Schedule

For ease of presentation, the comments on these are in red in the attached documents.

Disclosure Statement

For ease of presentation, the comments on these are in red in the attached documents.

I look forward to discussing this response to your draft lease documents with you.

Yours faithfully



Rick Underdown
President
Walkerville Lawn Tennis Club

Our Reference: 16.51.2.5

13 April 2017

Mr Rick Underdown
President
Walkerville Tennis Club
Stephen Terrace & Creswell Court
GILBERTON SA 5081

BY EMAIL: runder@adam.com.au

Dear Rick,

WALKERVILLE TENNIS CLUB | LEASE RENEWAL

I refer to our last meeting on 24 March 2017 whereby I gave you with an undertaking to provide a written response to your letters to Council. The letters I refer to are dated 4 December 2016 and 13 March 2017. Both were hand delivered on 24 March 2017.

Following our meeting on 24 March 2017 I have since forwarded to you an electronic copy of the draft lease that has been marked up with your comments. This was provided to you via email on 31 March 2017 and hopefully captures all of the items which you had identified were of concern in your earlier letter.

Many of the items raised in your letter of 13 March 2017 include proposed amendments that I am happy to incorporate into the new draft lease for consideration by Council at a future meeting date in the coming months. Other items that Council may not be able to easily change and that you have noted for discussion might now be best be handled through a further meeting.

To assist in this meeting I would like to include representatives from Wallman's Lawyers who Council has engaged to support the process of establishing new leases

I am confident that by reviewing the lease with Wallman's the few outstanding concerns that remain can be clarified and resolved. In this regard, I will in contact with you in during the coming week to establish your availability to attend a meeting with you and any other members of the Walkerville Lawn Club, representatives from Wallman's and myself.

Yours sincerely,



Allison Down
Property & Contracts Officer
adown@walkerville.sa.gov.au