



Item No: 19.2

Date: 18 June 2022

Attachment: A

<b>Meeting:</b>	Council
<b>Title:</b>	Strategic Property & Leasing Review - Walkerville Lawn Tennis Club
<b>Responsible Manager:</b>	Acting Chief Executive Officer, Scott Reardon
<b>Author:</b>	Acting Chief Executive Officer, Scott Reardon
<b>Key Pillar:</b>	<b>Strategic Framework – Key Pillar 4 – Assets – Continue to provide for and maintain a good standard of assets and public infrastructure</b>
<b>Key Focus Area:</b>	<b>Financial Guiding Principle 4 – Robust and transparent allocation and prioritisation of resources</b>
<b>Type of Report:</b>	Decision Required

Pursuant to Section 83(5) of the *Local Government Act 1999 (Act)*, the Acting 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) Act on the basis that the information contained in the attached report is information of the nature specified in subsections 90(3)(b)&(d) of the Act being information that could prejudice the commercial position of a person with whom Council is proposing to conduct business, and information that could confer a commercial advantage on a third party.

### Recommendation (Public)

#### Pursuant to s90(3)(d)

Pursuant to section 90(2) of the Act the Council orders that all members of the public, Acting Chief Executive Officer Scott Reardon, Acting Manager Corporate Services Vikki Purtle, Group Manager Assets & Infrastructure James Kelly, Communications & Marketing Manager Sarah Spencer and Council Secretariat Danielle Edwards, be excluded from attendance at the meeting for Agenda Item 19.2 Strategic Property & Leasing Review – Walkerville Lawn Tennis Club.

The Council is satisfied that, pursuant to section 90(3)(b)&(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 a person whom Council is proposing to conduct business with and information that could confer a commercial advantage on a third party.

### Recommendation (Confidential)

1. That Council rescind point 1 only of resolution **CNC478/16-17** which reads:

*That Council:*

1. *offer the Walkerville Lawn Tennis Club a five (5) year lease with a five (5) year renewal at the sole discretion of Council, on the property known as Walkerville Lawn Tennis Club, corner of Stephen Terrace and Creswell Court, Gilberton, on the terms of lease attached;*

and in lieu thereof replaces it with:

*That Council:*

1. offer the Walkerville Lawn Tennis Club a five (5) year lease on the property known as Walkerville Lawn Tennis Club, corner of Stephen Terrace and Creswell Court, Gilberton, on the terms of lease;
2. That Council enters into a new lease with the Walkerville Lawn Tennis Club Inc. over the portion of land contained within Certificate of Title Volume 5261 Folio 460, more commonly known as the Walkerville Lawn Tennis Club located at Creswell Court Gilberton, for a Term of five (5) years commencing 1 October 2022;
3. That a commencing annual lease fee \$3,000 (plus GST) be applied and be subject to annual CPI increases;
4. That the Mayor and Chief Executive Officer be authorised to finalise negotiations then execute any/all relevant and ancillary documents that pertain to the proposed Lease between Walkerville Lawn Tennis Club Inc. and Council including affixing of the common seal of Council.

### **Recommendation (Confidential)**

#### Pursuant to s.91(7)

That having considered Agenda Item 19.2 Strategic Property & Leasing Review – Walkerville Lawn Tennis Club in confidence under section 90(2) and (3)(b)&(d) of the Act, the Council, pursuant to section 91(7) of that Act orders that the documents and minutes relevant to this Agenda Item be retained in confidence for 6 months or until the contract has been signed, 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 Act Council and re-admit the public.

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### **Summary**

On 19 June 2017 Council resolved to enter in a new Lease Agreement (**Agreement**) with Walkerville Lawn Tennis Club Inc. (**Club**). The Agreement included an initial Term of five (5) years (which commenced 1 October 2017) and also included one right of renewal for a subsequent term of five (5) years commencing 1 October 2022. This decision (**CNC487/16-17**) in effect granted a total lease Term of ten (10) years.

The initial lease Term is due to expire midnight 30 September 2022, and in June 2022 the Club approached Administration seeking to exercise the right of renewal. Upon preparing this report Administration discovered that prior to resolving to support the ten year lease Term, Council did not undertake the mandatory public consultation process required under s.202 of the *Local Government Act 1999 (Act)* to alienate a portion of Community Land for a Term in excess of five (5) years. As such, the right of renewal cannot be exercised by either party as it is inconsistent with the provisions of the Act.

On this basis, to ensure the Club is given the opportunity to continue to operate and that Council remains compliant with its legislative obligations, it is recommended that Council endorse the recommendations of this report.

## Background – Decision Listing

<b>Ordinary Meeting</b>	<b>Council</b>
<b>Meeting Date</b>	18 April 2016
<b>Agenda Item</b>	13.3.6 Walkerville Tennis Update
<b>Resolution</b>	<b>CNC361/15-16</b>
	<i>That:</i>
	<ol style="list-style-type: none"><li><i>1. Council receives and notes the letter from Walkerville Tennis Club Incorporated dated 24 March 2016 including a request for renewal of the current lease for a further 5 + 5 year term; and</i></li><li><i>2. Council direct the Administration to formally respond to Walkerville Tennis Club Incorporated acknowledging receipt of its letter and reiterating its position regarding Council's review of its leasing and licensing framework.</i></li></ol>
<b>Moved</b>	<b>Cr David Shetliffe</b>
<b>Seconded</b>	<b>Cr Elizabeth Fricker</b>
	<b>Carried</b>

<b>Special Meeting</b>	<b>Council</b>
<b>Meeting Date</b>	27 September 2016
<b>Agenda Item</b>	3.1.2 Community Land Management Plans and Leases and Licences Revie Report, 27 September 2016
<b>Resolution</b>	<b>CNC137/16-17</b>
	<i>Council adopts Option a), of Attachment C for Creswell Reserve Sports and Recreation.</i>
<b>Moved</b>	<b>Cr David Shetliffe</b>
<b>Seconded</b>	<b>Cr Graham Webster</b>
	<b>Carried</b>

<b>Ordinary Meeting</b>	<b>Council</b>
<b>Meeting Date</b>	19 June 2017
<b>Agenda Item</b>	16.1.2 Walkerville Lawn Tennis Club Lease
<b>Resolution</b>	<b>CNC478/16-17</b>
	<i>That Council:</i>
	<ol style="list-style-type: none"><li><i>2. offer the Walkerville Lawn Tennis Club a five (5) year lease with a five (5) year renewal at the sole discretion of Council, on the property known</i></li></ol>

as Walkerville Lawn Tennis Club, corner of Stephen Terrace and Creswell Court, Gilberton, on the terms of lease attached;

3. set an annual rent of \$3,000;
4. 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.

**Moved**            **Cr Gianni Busato**  
**Seconded**       **Cr Elizabeth Fricker**

**Carried**

*Cr Webster called for a division*

Those for the motion: Councillors Shettiffe, Fricker, Busato, & Williams  
Those against the motion: Councillors Webster & Graham-King

## Discussion/Issues for Consideration

### Community Land Management Plan Review

As part of Council's decision making process for the 2016 Community Land Management Plan review, Council also combined and considered the review of lease for the Walkerville Lawn Tennis Club. At their meeting of 27 September 2016, Council considered proceeding with a new lease for the Club, and noted the following implications in doing so:

- (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."

### Lease Agreement and Right of Renewal

At the Ordinary Meeting of 19 June 2017 Council resolved (**CNC487/16-17**) to enter in a new Lease Agreement (**Agreement**) with Walkerville Lawn Tennis Club Inc. (**Club**). The Agreement included an initial Term of five (5) years (which commenced 1 October 2017) and also included one right of renewal for a subsequent term of five (5) years commencing 1 October 2022; in effect granted a total lease Term of ten (10) years.

### Legislative Framework

Pursuant to section 202 of the *Local Government Act 1999* the maximum proposed Lease/Licence Term Council can grant is for a Term of up to and including is five years,<sup>1</sup> unless the required statutory process for alienating a portion of Community Land for a Term in excess of five years is undertaken.<sup>2</sup> It has been confirmed that Council did not undertake this statutory process in 2017 prior to endorsing the Lease.

<sup>1</sup> *Local Government Act 1999* (SA), s.202 (3) (a).

<sup>2</sup> *Local Government Act 1999* (SA), s.202 (2) & (4).

General Terms & Conditions of Proposed New Lease Assignment

<b>Lessee</b>	<b>Walkerville Lawn Tennis Club Inc.</b> ABN 43 516 536 926
<b>The Land</b>	The whole of the land contained within Certificate of Title Volume 5261 Folio 460.
<b>Premises</b>	The portion of the land contained within Certificate of Title Volume 5261 Folio 460, more commonly known as the Walkerville Lawn Tennis Club, as bound in red on Annexure 3 of Attachment A.
<b>Permitted Use</b>	Sports and recreational facility.
<b>Term</b>	Five (5) years
<b>Commencement Date</b>	1 October 2022
<b>Commencing Annual Rent</b>	\$3,000 (plus GST)
<b>Renewal Term</b>	Nil.
<b>Rent Review</b>	Annual CPI Increases on Licence Anniversary Date.
<b>Public Liability Insurance</b>	\$20,000,000

**Options for Consideration**

Option 1

1. That Council rescind point 1 only of resolution **CNC478/16-17** which reads:

*That Council:*

1. *offer the Walkerville Lawn Tennis Club a five (5) year lease with a five (5) year renewal at the sole discretion of Council, on the property known as Walkerville Lawn Tennis Club, corner of Stephen Terrace and Creswell Court, Gilberton, on the terms of lease attached;*

and in lieu thereof replaces it with:

*That Council:*

1. *offer the Walkerville Lawn Tennis Club a five (5) year lease on the property known as Walkerville Lawn Tennis Club, corner of Stephen Terrace and Creswell Court, Gilberton, on the terms of lease;*
2. That Council enters into a new lease with the Walkerville Lawn Tennis Club Inc. over the portion of land contained within Certificate of Title Volume 5261 Folio 460, more commonly known as the Walkerville Lawn Tennis Club located at Creswell Court Gilberton, for a Term of five (5) years commencing 1 October 2022;
3. That a commencing annual lease fee \$3,000 (plus GST) be applied and be subject to annual CPI increases;
4. That the Mayor and Chief Executive Officer be authorised to finalise negotiations then execute any/all relevant and ancillary documents that pertain to the proposed Lease renewal between Walkerville Lawn Tennis Club Inc. and Council including affixing of the common seal of Council.

Option 2

That Council refuses the Lease and directs Administration to undertake the following alternate action(s):

- .....

## Analysis of Options

Option 1 is the recommended option, as it allows for both the Club the opportunity to continue to operate and Council remain compliant with the Act.

Option 2 results in the potential eviction of the community tenant.

## Financial Implications

The Club has requested that Council consider a lower fee to assist in reducing the financial burden upon their members.

While noting that the proposed lease fee of \$3,000 is a decrease from the current annual lease fee of \$3,236.28, as it is recommended that this fee be applied as a form of compensation due to Council not completing the mandatory statutory notification process in 2017 which has resulted in the need to enter into a new lease.

The proposed fee adequately reflects Administrations 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 Option 1 ensures that Council manages its obligations regarding Community Land under the *Local Government Act 1999*.

## Preferred Option & Reasoning

Option 1 is the preferred option as it delivers an outcome that allows the Club is given the opportunity to continue to operate and that Council remains compliant with the Act.

## Attachment

Attachment A	Draft Lease Agreement
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## LEASE AGREEMENT

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Between:

**THE CORPORATION OF THE TOWN OF WALKERVILLE**  
("Landlord")

AND

**WALKERVILLE LAWN TENNIS CLUB INC.**  
("Tenant")

**WALKERVILLE LAWN TENNIS CLUB**  
**CRESWELL COURT GILBERTON SA 5081**





- 1.6 "**Default Rate**" means a rate of two per centum (2%) per annum greater than the published annual rate of interest charged from time to time by Westpac Banking Corporation on overdraft facilities of more than \$100,000.00 and if there is more than one rate published the higher of those rates.
- 1.7 "**GST**" has the meaning given to it under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any similar or ancillary legislation.
- 1.8 "**Land**" means the land described in Item 3 of Schedule 1 and includes the Building on any part of the Land.
- 1.9 "**Landlord**" means the Corporation of the Town of Walkerville and includes:
- (a) the executors administrators and assigns of the Landlord if the Landlord is a natural person,
  - (b) the successors and the assigns of the Landlord if the Landlord is a body corporate,
  - (c) (where the context allows) any servants workmen or agents of the Landlord,
- 1.10 "**Landlord's Property**" means all Landlord's fixtures, fittings, plant, equipment, services, chattels and any other goods installed or situated in or on the Premises by or behalf of the Landlord and available for use by the Tenant.
- 1.11 "**Outgoings**" means (to the extent that the same are not specifically payable by any tenant of the Building or the Tenant pursuant to this Lease) all amounts paid or payable by the Landlord or payments which the Landlord incurs or may be or become liable for in any one Accounting period or in any other lesser or relevant period in respect of the Land and the building whether by direct assessment or otherwise howsoever and includes:
- (a) all rates taxes charges assessments outgoing levies and impositions whatsoever which may be assessed charged or imposed in respect of the Land or the building or any part thereof including any charges for excess water but excluding income tax capital gains tax and all other taxes applicable to income or capital gain payable by the Landlord;
  - (b) all insurance premiums and other charges including stamp duty payable by the Landlord in relation to policies of public risk insurance covering the building and the Landlord's fixtures and fittings therein (including all glass if applicable) against normal and usual risks deemed necessary by the Landlord (including but without limiting the generality thereof loss or damage by fire, explosion, storm, lightning, earthquake, tempest, flood, burst pipes, impact, aircraft and articles dropped therefrom, riot, civil commotion and malicious or accidental damage, loss of rent and machinery breakdown) to the full insurable value thereof,
  - (c) insurance premiums and other charges including stamp duty for workers compensation insurance for all employees of the Landlord engaged in employment in the building;
  - (d) the costs of electricity or other sources of energy consumed in the production and reticulation of chilled water and conditioned air for the air conditioning equipment servicing the building and all other costs arising from the operation of the air conditioning system including but not limited to fuel oil grease labour and

a full comprehensive maintenance contract (if any);

- (e) all costs in connection with the repair, maintenance, operation, supply, replacement and renovation of lifts, air conditioning equipment, fire protection equipment, all other services and plant and equipment in the Building and Common Areas from time to time;
- (f) all costs in connection with the cleaning, lighting, heating and air-conditioning of the Premises and Common Areas and providing supplies and consumables for toilets, washrooms and other facilities provided to the Premises and in the Common Areas (with the exclusion of the external public toilet amenities);
- (g) all costs 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 in connection with caretaking and security services;
- (i) all costs (including employment and other usual employment on-costs) of the management, control and administration of the Land and Building;
- (j) the cost of maintaining lighting servicing and repairing the Building such cost comprising the gross costs and expenses of every kind and nature incurred by the Landlord including but not limited to the replacement of parts necessary to keep any of the plant, machinery and equipment in good working order and condition, resurfacing and repainting, pest control, and caretaking services, emergency evacuation systems and procedures, access control systems, replanting and re landscaping, directional signs and other markers, patrol of the Common areas and supervision of traffic directions when reasonably required, car stops, lighting and other utilities and the cost of electricity consumed therein and all things necessary in the reasonable opinion of the Landlord for the operation maintenance repair and/or renovation of the Common Areas in a state of good and sanitary order condition and repair;
- (k) all reasonable legal, accounting and other professional fees incurred in connection with the conduct and operation of the Building and in particular any such fees of and incidental to the preparation of any estimates or statements of Outgoings or otherwise required to be furnished by the Landlord to the Tenant hereunder or at law.
- (l) all and any other expenditure costs or expenses incurred by the Landlord in or about or incidental to the Building or the Premises not hereinbefore expressly referred to.

1.12 "**Premises**" means the whole or portion of the Land specified in Item 2 of Schedule 1 and includes all buildings improvements appurtenances alterations or additions (if any) now or hereafter situated thereon and any fixtures fittings plant equipment goods chattels furniture furnishings and effects (if any) of the Landlord's Property.

1.13 "**rent**" means the rent payable under this Lease.

1.14 "**Review Date**" means the respective date(s) set out in Item 7 of Schedule 1.

1.15 "**Rules and Regulations**" means the procedures and rules and regulations annexed hereto and so entitled and or as may from time to time be made, varied or amended

by the Landlord pursuant to this Lease.

- 1.16 "**Services**" means the services (such as gas, electricity, water, sewerage, drainage, communications, fire fighting, air conditioning, lifts, plant, equipment, pipes and cables) to or of the Building or any premises in or the Land, provided by authorities, the Landlord or any person authorised by the Landlord.
- 1.17 "**Schedule**" means the Schedules annexed hereto.
- 1.18 "**Tenant**" means the Tenant named in Item 1 of Schedule 1 and includes:-
- (a) the executors administrators and permitted assigns of the Tenant if the Tenant is a natural person,
  - (b) the successors and the permitted assigns of the Tenant if the Tenant is a body corporate,
  - (c) any and all Trust or Trusts of which the Tenant is trustee,
  - (d) (where the context allows) any servants workmen or agents of the Tenant and any other person in or about the premises at any time at the request or invitation of or under the control or direction of the Tenant,
- 1.19 "**Tenant's Property**" means any and all fixtures and fittings and other equipment installed in or brought on to or kept in the Premises by the Tenant.
- 1.20 "**Tenant's Proportion**" means the same proportion as the lettable area of the premises bears to the whole of the lettable area of the Building, such lettable areas to be determined in accordance with the Property Council of Australia 1997 method of measurement or such other method of measurement as the Landlord reasonably determines.
- 1.21 "**Term**" means the term specified in Item 5 of Schedule 1 and includes the term of any extension or renewal and period of holding over of this Lease.
- 1.22 Headings to clauses shall not form part of this Lease or be used for the purpose of interpretation but shall be deemed to be for the purpose only of facilitating reference to the various provisions of this Lease.
- 1.23 Where the context of this Lease permits or requires:
- (a) words in the singular shall include the plural and words in the plural include the singular;
  - (b) words of or importing the masculine gender include the feminine gender;
  - (c) words referring to a person include a body corporate,
- 1.24 A reference to any statute code or regulation includes all amendments and revisions made from time to time to that statute code or regulation and any statute code or regulation passed in substitution therefor or incorporating any of its provisions.
- 1.25 Any provision of this Lease which by virtue of the Act (if it applies to this Lease) or any other statute or law is invalid void or unenforceable, is capable of severance without affecting any other provision of this Lease.

- 1.26 Unless otherwise stated, the Landlord may in its discretion give (conditionally or unconditionally) or withhold any approval or consent under this Lease.
- 1.27 If the Tenant comprises two or more persons the word "Tenant" will apply to them jointly and each of them severally.

## 2. GRANT OF LEASE

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

## 3. RENT AND RENT REVIEW

### 3.1 Rent

The Tenant must pay the rent as specified in Item 6 of Schedule 1 and reviewed in accordance with the terms of this Lease to the Landlord as directed from time to time by the Landlord or the Landlord's agent. The Tenant must pay the rent in advance, the first payment to be made on or before the Commencement Date and subsequent payments must be made on the same day of each calendar month during the Term without any abatement, deduction or demand.

### 3.2 Rent Review

3.2.1 The rent will be reviewed as at and from each Review Date specified in Item 7(a) of Schedule 1 to an amount equal to the rent (disregarding all incentives rebates and rent free periods) payable immediately before the relevant Review Date increased by 2.5% per annum;

3.2.2 The rent will be reviewed as at and from each Review Date specified in Item 7(b) of Schedule 1 to an amount determined in accordance with the following formula:-

$$A = \frac{R \times C1}{C2}$$

where

'A' is the revised annual rent.

'R' is the annual rent payable during the year immediately preceding the relevant Review Date.

'C1' is the Index Number for the quarter ending immediately prior to the relevant Review Date.

'C2' is the Index Number for the quarter ending immediately prior to the date the rent being reviewed first became payable

3.2.3 The words "Index Number" used above mean the Consumer Price Index (All Groups) for Adelaide as published by the Australian Bureau of Statistics but if the Australian Bureau of Statistics ceases to publish the Consumer Price Index before the end of the Term, the words "Index Number" will mean some index reflecting fluctuations in the cost of living in Adelaide upon which the parties

agree, but in default of such agreement, such index as will be determined by the President for the time being of the Australian Property Institute (South Australian Division) or his nominee as reflecting fluctuations in the cost of living in Adelaide, and such person's decision will be final and binding on the parties. In making such determination the President or his nominee will be deemed to be acting as an expert and not as an arbitrator. The cost of any such determination will be borne equally by the Landlord and the Tenant.

- 3.2.4 Until the rent is determined or agreed in accordance with the relevant rent review formula the Tenant will continue to pay to the Landlord rent at the rate applicable immediately prior to the relevant Review Date. On the first day for payment of rent after the rent is determined or agreed in accordance with this clause the Tenant must pay the new rent to the Landlord together with an adjustment (if any) in respect of the period from the date of the rent review until the date of such payment.
- 3.2.5 If this Lease is not a lease to which the Act applies, the rent payable pursuant to any review of rent will in no case be less than the rent payable immediately prior to the relevant Review Date.

#### **4 GST**

Unless otherwise stated in Item 6 of Schedule 1, rent and other monies payable by the Tenant to the Landlord pursuant to this Lease do not include any GST. If a GST is chargeable with respect to the payment by the Tenant to the Landlord of rent and or other monies pursuant to this Lease, the Tenant must on demand pay the GST or reimburse the Landlord for any GST paid or payable by the Landlord with respect to such rent and or other monies. The Landlord must provide to the Tenant an appropriate tax invoice in respect of any such GST payment or re-imburement by the Tenant.

#### **5. RATES, TAXES AND OUTGOINGS**

##### **5.1 Rates and Taxes**

The Tenant must pay or reimburse to the Landlord the Tenant's Proportion of all present and future rates charges taxes levies assessments duties impositions and fees (including council rates and emergency services levy) levied, assessed or charged in respect of the Premises or upon the owner or occupier of the Premises and such payments must be adjusted between the Landlord and the Tenant as at the Commencement Date and the end or termination date of this Lease in respect of that portion of the financial year the relevant cost was incurred.

##### **5.2 Utility Charges**

- 5.2.1 The Tenant must pay as and when the same fall due, all charges for gas electricity oil and water separately metered and consumed in or on the Premises and also all charges in respect of any telephone services connected to the Premises and all other charges and impositions imposed by any public utility or authority for the supply of any other utility service separately supplied and/or consumed in respect of the Premises.
- 5.2.2 If the Tenant defaults in payment of any of the charges referred to in clause 5.2.1 then the Landlord may pay the same and recover the amount paid as if the same were rent in arrears payable by the Tenant.

### 5.3 Payment Of Outgoings

- 5.3.1 The Tenant must pay the Tenant's Proportion of the Outgoings by way of equal monthly payments together with the rent each month or by way of lump sum payments as Outgoings are incurred or payable by the Landlord (as the Landlord may direct). If the year in which any particular outgoing is payable does not coincide with a year of this Lease, the amount the Tenant is to pay in the first and last years of this Lease is to be adjusted proportionately.
- 5.3.2 The Landlord will calculate the actual amount payable by the Tenant pursuant to this clause as soon as possible after 30 June in each Accounting Period and will adjust any difference. Any over-payment by the Tenant will be credited to the first payment due by the Tenant after the assessment is made (or refunded if this Lease is at an end) and any under-payment by the Tenant shall be added to the first payment to be made by the Tenant after the assessment is made (or will be paid by the Tenant on demand if this Lease is at an end).

## 6. MAINTENANCE AND REPAIRS

### 6.1 Maintenance

- 6.1.1 The Tenant must keep and maintain the Premises, the Tenant's Property and any Services situated within the Premises and which exclusively service the Premises in good and substantial repair and condition and where appropriate in good working order, which includes an obligation to ensure that all electrical wiring and appliances are at all times in a safe condition.
- 6.1.2 If the Landlord so requires, the Tenant must enter into a service and maintenance contract in respect of any air conditioning plant and equipment exclusively servicing the Premises, which contract must be first approved by the Landlord (such approval not to be unreasonably withheld);
- 6.1.3 If the Landlord so requires, the Tenant must promptly repair any damage to the Building or the Land caused or contributed to by the act, omission, negligence or default of the Tenant.
- 6.1.4 In addition to the maintenance, repair and replacement obligations outlined in this clause (and this Lease generally) the respective responsibilities of the Landlord and the Tenant 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 Schedule 2 (**Maintenance**).
- 6.1.5 Where the Tenant is responsible for any Maintenance pursuant to the terms of this Lease, the Tenant must, at the same time as providing a copy of its annual report in accordance with clause 10, provide a report to the Landlord setting out the amount of money which the Tenant proposes to set aside in the following year for Maintenance.
- 6.1.6 The Tenant must, when requested to do so by the Landlord, provide the Landlord with a copy of all invoices, receipts, records, reports, certificates and other related information in relation to all maintenance, repair and/or replacement works carried out by (or on behalf of) the Tenant during the Term.



## 6.2 Maintenance of Plant and Equipment

If the Tenant exclusively uses any plant or machinery installed in the Premises or the Landlord installs any plant or machinery at the request of the Tenant within and or servicing the Premises then the Tenant must keep all such plant or machinery maintained serviced and in good repair and will enter into and keep current at the Tenant's expense such maintenance service and repair contracts as are reasonably required by the Landlord for that purpose with contractors approved by the Landlord.

## 6.3 Tenant's Other Maintenance Obligations

The Tenant must at the Tenant's expense:

- 6.3.1 ensure that all waste is placed daily in suitable receptacles and subject to this clause 6, ensure the Premises is cleaned regularly in a proper and professional manner and ensure all waste and refuse is promptly and regularly removed from the Land;
- 6.3.2 as soon as is reasonably possible make good any damage to any part of the Building (including the Common Areas) or to the Premises or any part thereof (including ceilings) caused or contributed to by the Tenant;
- 6.3.3 immediately replace all broken glass in respect of the Premises;
- 6.3.4 take all proper precautions to keep the Premises free from pest infestation and if required by the Landlord engage a pest exterminator approved by the Landlord for that purpose;
- 6.3.5 repair or where appropriate replace any Landlord's Property such as heating lighting electrical and plumbing fittings installed in the Premises broken or damaged by the Tenant;
- 6.3.6 comply with all statutes ordinances proclamations orders and regulations affecting the Premises or any fixtures or fittings installed by the Tenant;
- 6.3.7 comply with any notices or orders which may be given by any statutory or regulatory authority in respect of the Premises or their use by the Tenant and keep the Landlord indemnified for all such matters.

## 6.4 Repairs

If at any time during this Lease the Landlord, or the Landlord's agents or contractors find any defect decay or want of reparation in the Premises or find any state or condition thereof contrary to any covenant or agreement on the part of the Tenant contained in this Lease, the Landlord, or the Landlord's agent or contractor may give to the Tenant notice in writing to make good repair restore or amend the same within a reasonable time to be therein stated and the Tenant must within such time sufficiently and in good and proper and professional manner make good repair restore or amend the same to the reasonable satisfaction of the Landlord and if the Tenant fails to comply with any such notice the Landlord may (but is not obliged to do so) by or with the Landlord's attorney agent and or contractors enter into and upon the Premises and carry out the requirements of such notice (causing as little disturbance to the Tenant as is practicable). All costs charges and expenses incurred by the Landlord in so doing will be a debt due from the Tenant to the Landlord payable on demand and recoverable

in the same manner in all respects as the rent hereby reserved.

## **6.5 Cleaning**

6.5.1 The Tenant must ensure the Premises is routinely and properly cleaned (including without limitation to arrange for all rubbish waste and garbage to be regularly removed from the Premises).

6.5.2 If the Landlord provides or requires a service for the routine cleaning of the Building or the Premises then the Tenant must, if reasonably requested by the Landlord, use such service for the Cleaning of the Premises (to the extent the service applies) and must permit the Landlord's cleaning contractors to have access to the Premises at all reasonable times for the purpose of carrying out such cleaning. The Tenant must pay to the Landlord in addition to the rent and as and when required by the Landlord, all costs of the cleaning of the Premises and the Tenant's Proportion of the overall costs of the cleaning of the Building (including any Common Areas).

## **6.6 Notice of Defect**

The Tenant must promptly give notice to the Landlord (or where appropriate to the appointed agent of the Landlord) of:-

6.6.1 any damage and of any accident to or defect or want of repair in the Premises or in the Building or in any Services or other facilities provided by the Landlord in the Premises or the Building to make the Premises or the Building, Common Area and the Land safe from any danger, risk or hazard; or

6.6.2 any circumstance or event which the Tenant ought reasonably be aware might cause danger, risk or hazard to any person within the Premises or the Building.

## **6.7 Common Areas and Grounds**

The Tenant must not deposit or cause permit or suffer to be deposited any debris refuse or rubbish of any kind in or on any Common Areas grounds gardens yards lanes ways or rights of way or in or on any public road or footway abutting upon or adjacent to the Premises or the Land.

## **6.8 Inspection and Landlord Works**

The Tenant must permit the Landlord and the Landlord's agents and contractors and all persons authorised by them at all reasonable times of the day and on reasonable notice to enter the Premises to examine the state of repair and condition thereof, carry out and observe the Landlord's maintenance and repair obligations as set out in Schedule 2, and execute repairs or to paint the Premises or any part thereof (which the Landlord may do without prejudice to any covenant or agreement on the part of the Tenant contained in this Lease). The Landlord in executing such repairs or painting must use reasonable endeavours to cause as little disturbance to the Tenant as is practicable.

## **6.9 Employment of Contractors**

If any work has to be done by the Tenant in or about the Premises in order to comply with the Tenant's obligations pursuant to this Lease the Tenant must engage and



employ only such contractors as have a public liability policy for an amount which in the reasonable opinion of the Landlord is adequate and who are previously approved of in writing by the Landlord or the Landlord's architect.

## **6.10 Painting**

6.10.1 The Tenant must, at its cost, paint all parts of the Premises which have previously been painted, or should reasonably be painted when such painting is reasonably required;

6.10.2 The Tenant must carry out the painting in a proper and professional manner, in colours reasonably approved by the Landlord.

## **7. ALTERATIONS AND ADDITIONS**

### **7.1 Alterations by Tenant**

7.1.1 The Tenant must not install or use in the Premises internal partitions other than of a standard and specification previously approved in writing by the Landlord.

7.1.2 The Tenant must not install or place in the Premises any heavy item fixture or fitting which may (in the reasonable opinion of the Landlord) cause unreasonable noise or vibrations, overload the switchboard or cause structural or other damage to any part of the Building.

7.1.3 The Tenant must not make alterations or addition to the Premises nor install or alter any partitioning or temporary or permanent structures or fittings in the Premises without the Landlord's prior written approval, and :

(a) in seeking the Landlord's approval to a proposed alteration, addition or installation the Tenant must submit plans and specifications of the proposed work;

(b) if the Landlord agrees to grant its approval, then such approval may be granted subject to any conditions the Landlord considers appropriate, including:

(i) any such work be supervised by a person nominated by the Landlord;

(ii) any such work be executed by contractors or tradesmen in a proper and professional manner under the supervision of appropriately qualified persons approved by the Landlord with public liability insurance for an amount that in the reasonable opinion of the Landlord is adequate;

(iii) the Tenant pays all reasonable costs incurred by the Landlord in considering the proposed works and their supervision including the fees of architects or other consultants employed by the Landlord;

(iv) the Tenant obtains all necessary approvals or permits necessary to enable such proposed work to be lawfully effected and on request by the Landlord produces for inspection to the Landlord

copies of all such approvals and permits;

- (v) upon completion of the works, the Tenant must produce to the Landlord any certificates of compliance issued by any such statutory or regulatory authority;
- (vi) the Tenant reimburses the Landlord any reasonable cost or expense that it incurs as a result of the installation operation or removal of any such equipment fixture fitting or machinery.

## **7.2 Alterations by Landlord**

7.2.1 The Tenant will permit the Landlord and any person authorised by the Landlord:

- (a) to carry out inspections of or modifications or additions to or other works on the Land (including the Premises where the Landlord has given reasonable prior notice to the Tenant); and
- (b) where the Landlord has given reasonable prior notice to the Tenant to enter the Premises for the purpose of carrying out such works

causing as little disturbance as is practical to the Tenant in undertaking such works provided that the Landlord may not commence to carry out any alteration or refurbishment to the Land (other than routine maintenance or repairs) that is likely to adversely affect the Tenant's use of the Premises unless:

- (c) the Landlord has given the Tenant at least one (1) month's notice of the proposed alteration or refurbishment; or
- (d) the alteration or refurbishment is required by an emergency and the Landlord has given the Tenant the maximum period of notice that is reasonably practicable in the circumstances;

7.2.2 Subject to the preceding subclause in an emergency the Landlord may without notice enter the Premises and carry out any works deemed necessary by the Landlord;

7.2.3 Except as permitted by the Act, the Tenant will not make any claim or commence any action against the Landlord for breach of this clause or otherwise in respect of such entry on to the Premises or the execution of any of the works contemplated by this clause.

## **8. ASSIGNMENT AND OTHER DEALINGS**

### **8.1 Assignment, Subletting and Disposal of Tenant's Interests**

8.1.1 The Tenant must not transfer or assign the Premises or any part thereof or assign, transfer or otherwise dispose of this Lease without the Landlord's prior written consent. The Landlord's consent may be withheld in the Landlord's absolute discretion except where the Act applies.

8.1.2 The Tenant must:-

- (a) request the Landlord's consent to an assignment, transfer or other disposition of the Premises or this Lease in writing.
  - (b) promptly provide the Landlord with information the Landlord reasonably requires about the financial standing and business experience of the proposed assignee.
  - (c) if the Act applies to this Lease, before requesting the Landlord's consent to a proposed assignment of the Premises or this Lease, furnish the proposed assignee with:-
    - (i) a copy of any disclosure statement given to the Tenant in respect of this Lease, and
    - (ii) details of any changes that have occurred in respect of the information contained in that disclosure statement since it was given to the Tenant (being changes of which the Tenant is aware or could reasonably be expected to be aware); and
    - (iii) any other procedural requirements set out in the Act.
- 8.1.3 To enable the Tenant to comply with the preceding subclause and if the Act applies to this Lease, the Tenant may, in writing, request the Landlord to provide the Tenant with a copy of the disclosure statement concerned and if the Landlord does not comply with such a request within 14 days after it is made, the preceding subclause will not apply to the Tenant in respect of the assignment transfer or other disposition in relation to which the disclosure statement applies.
- 8.1.4 Where the Act applies, the Landlord may withhold the Landlord's consent to the assignment of the Premises or this Lease in any of the following circumstances:-
- (a) if the proposed assignee proposes to change the use to which the Premises are put;
  - (b) if the proposed assignee is unlikely (in the Landlord's reasonable opinion) to be able to meet the financial obligations of the Tenant under this Lease;
  - (c) if the proposed assignee's business skills are inferior (in the Landlord's reasonable opinion) to those of the Tenant, or
  - (d) if the Tenant has not complied with procedural requirements for obtaining the Landlord's consent.
- 8.1.5 Nothing in the preceding subclause will prohibit the Landlord from granting the Landlord's consent to an assignment, transfer or other disposition of this Lease subject to the Tenant complying with such reasonable conditions as the Landlord considers appropriate.
- 8.1.6 Nothing in the preceding provisions of this clause prevents the Landlord from requiring payment of a reasonable sum for legal or other expenses incurred in connection with such a consent (whether consent is granted or not).

- 8.1.7 The Landlord may as a condition of granting its consent require that the proposed transferee or assignee provide to the Landlord such guarantee or guarantees of the transferee's or assignee's performance of the Tenant's obligations under this Lease which the Landlord requires.
- 8.1.8 The Tenant must not:
- (a) grant a sub-lease, licence of concession for the whole or any part of the Premises;
  - (b) part with or share possession of the whole or any part of the Premises;
  - (c) mortgage or otherwise change or encumber the Tenant's interest in this Lease, without the Landlord's prior written consent, which consent the Landlord is not obliged to give notwithstanding anything to the contrary in this Lease.
  - (d) If the Tenant is a company (except a company whose shares are listed on a stock exchange in Australia) a transfer of shares (except as a result of inheritance) totalling more than one half of the issued share capital of the Tenant; or of the controlling interest of the Tenant will be deemed to be an assignment of this Lease requiring the prior written consent of the Landlord.

## **8.2 Hiring out of Premises**

The Tenant may hire the Premises to other persons or bodies on a casual or seasonal basis during such times notified by Landlord from time to time strictly in accordance with the following terms and conditions:

- 8.2.1 If the party wishing to hire the Premises intends to use any floodlights servicing the outdoor areas of the Premises, then unless the proposed use of the floodlights is restricted to times during which the Landlord has already given permission of floodlighting to be used, the Tenant must first obtain the Landlord's written consent.
- 8.2.2 The Tenant must notify the Landlord of the fees set by the Tenant for hiring out the Premises, and any changes to the hire fees within 14 days of the determination of or change in the hire fees.
- 8.2.3 If the Landlord considers at its discretion that the hire fees set by the Tenant are too high or too low (in comparison) with hire fees for similar facilities in those areas of the Town of Walkerville council area then it may direct the Tenant to change the hire fees to a level set by the Landlord.
- 8.2.4 The Tenant must ensure that any hire agreement it enters into does not breach any provision of this Lease and is in such form notified and approved by Landlord.
- 8.2.5 On a quarterly basis and upon written request, the Tenant must provide the Landlord with a full report in relation to the hiring out of the Premises, such details to include the dates, times, name of the hiring party, event purpose, fees charged and any other details reasonably requested by the Landlord.
- 8.2.6 The Tenant must not unreasonably refuse to hire out or otherwise licence the

Premises to any person, body or organisation upon receipt of a request to do so from the Landlord and/or any member of the public at any time other than when the Premises are:

- (a) actively in use by the Tenant; or
- (b) on hire or licensed to another person, body or organisation pursuant to this clause.

8.2.7 When the Premises or the Building is being used for any function or is otherwise being used in relation to any hiring out, the Tenant must ensure that:

- (a) any noise is kept to a level that is not audible from outside the Land; and
- (b) the use and enjoyment of the Land by any other party or licensee then in possession of or otherwise using the Land is not unduly interfered with or otherwise impeded.

## 9. USE OF PREMISES

### 9.1 Permitted Use

9.1.1 The Tenant must use the Premises only for the purpose specified in Item 4 of Schedule 1 or other purposes incidental thereto or for such other purposes which the Landlord may give prior written permission for.

9.1.2 The Tenant must not use the Premises or any part thereof nor cause permit or allow anyone to sleep on the Premises, nor carry on or cause permit or allow to be carried on upon the Premises or any part thereof for any noxious noisome or offensive art trade business occupation or calling and must not use the Premises or any part thereof or cause permit or allow the same to be used for any unlawful purpose without the landlord's consent.

### 9.2 No Warranty by Landlord

The Tenant warrants to the Landlord that the Tenant has relied on the Tenant's own judgement and expertise and the Tenant's experts in deciding that the Premises are suitable for the Tenant's purposes and that the Landlord has given no promise, representation or warranty to the Tenant as to the use to which the Premises may be put and that the Tenant has satisfied itself thereof and the Tenant will be deemed to have accepted this Lease with full knowledge of, and subject to, any prohibition or restrictions on the use thereof under or in pursuance of any Act, Ordinance, Regulation, By-law or other statutory enactment or order of Court. Should the Permitted Use require the consent of any authority under or in pursuance of any such Act, Ordinance, Regulation, By-law or other enactment or order of Court the Tenant must obtain such consent at the Tenant's own cost and expense. To the fullest extent permitted by law all warranties as to suitability and as to adequacy implied by law are hereby expressly negated.

### 9.3 Licenced Premises

9.3.1 The Tenant must not:

- (a) serve, sell or provide to persons; or
- (b) consume or allow persons to consume;
- (c) alcoholic beverages on the Premises without the Landlord's consent.

9.3.2 Unless the Tenant first obtains the written consent of the Landlord, the Tenant 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*.

9.3.3 If the Tenant obtains a licence (or licences) as permitted by this clause, the Tenant must not do (or fail to do) or allow any of its employees, agents, contractors, licensees or invitees to do (or fail to do):

- (a) anything that is in breach of the *Liquor Licensing Act 1997* and/or the *Gaming Machines Act 1992* (as the case may be) or of the conditions of the relevant licence; or
- (b) anything that may result in the relevant licence being revoked or suspended.

#### 9.4 Grease Trap and Range Hood

9.4.1 Where any range-hood, exhaust, grease arrestor or triple interceptor and associated plant and equipment exclusively service the Premises, the Tenant must:

- (a) at its own expense, regularly clean, service, maintain, repair and empty (where applicable) each device to ensure it is in good working order and condition and so that nothing impairs its operation or efficiency, or causes unreasonable annoyance, nuisance, damage or disturbance to any persons who occupy nearby space or premises;
- (b) pay for all running costs associated with each device;
- (c) not do, or permit, or suffer to be done, anything in relation to each item that might interfere with, or impair, its efficient operation;
- (d) comply with all applicable laws, regulations and notices and requirements of any governmental body relating to the grease arrestor and the transport and disposal of grease and other waste from the grease arrestor;
- (e) provide to the Landlord upon request all service notes and invoices evidencing the completion of all servicing, repairs, cleaning and waste removal;
- (f) obtain and maintain during the Term all permits, licences or other consents required in relation to the installation, use and operation of the grease arrestor;
- (g) promptly and fully comply with all directions and requirements of the

Landlord regarding the use and operation of the grease arrestor which the Landlord notifies the Tenant in writing.

- 9.4.2 If any range-hood, exhaust, grease arrestor or triple interceptor comprises the Landlord's Property, then the Tenant will not be responsible for any replacement of those items at the end of their useful life provided that the need for replacement was not caused or contributed by the act, omission, negligence or default of the Tenant. If any range-hood, exhaust, grease arrestor or triple interceptor comprises the Tenant's Property, then the Tenant is in all respects responsible for all costs associated with those devices.
- 9.4.3 If the Premises are not connected to a range-hood, exhaust, grease arrestor or triple interceptor or similar device and the Tenant's use of the Premises means that the Premises are required to be connected to such a device, then the Tenant must promptly install such a device in compliance with clause 7, at its expense and thereafter comply with clause 6 and this clause 9.
- 9.4.4 Where a range-hood, exhaust, grease arrestor or triple interceptor does not exclusively service the Premises, the Tenant must punctually pay, free from all deductions, a proportion of all charges associated with maintenance of the range-hood, exhaust, grease arrestor or triple interceptor as the Landlord in its sole discretion deems reasonable having regard to:
- (a) the ratio of the lettable area of the Premises to the lettable area of the Building; and
  - (b) other occupants on the Land; and
  - (c) the respective use of the range-hood, exhaust, grease arrestor or triple interceptor by all occupiers of the Land; and
  - (d) any other reasonable factor that is relevant to the Landlord.
- 9.4.5 Without limiting any other provision of this Lease, the Tenant:
- (a) must maintain insurance for the grease arrestor;
  - (b) must repair, maintain and replace any damaged or non working item comprising the grease arrestor;
  - (c) must reinstate and make good; and
  - (d) indemnifies the Landlord,
- in the same manner and to the same extent as provided in this Lease.
- 9.4.6 If the Tenant does not pay the costs of any of the Services by the respective due date, the Landlord may pay for the Services and the amount paid is repayable by the Tenant as a debt due to the Landlord.

## 9.5 Signs

The Tenant must not allow any advertisement notice poster hoarding or sign to be affixed to or placed near any window in the Premises so as to be visible from the



outside of the Building except where the Landlord's consent is obtained and where all relevant laws and statutory requirements are satisfied.

## 9.6 Compliance with Acts, By Laws and Regulations

The Tenant must at the Tenant's cost and expense:

- 9.6.1 comply with every notice order or requirement relating to the Premises and requiring any condition defect or want of reparation to be remedied which may be given or made to the Landlord or to the Tenant in pursuance of the *South Australian Public Health Act (2011)* and or the *Local Government Act (1999)* or Acts for the time being in force in the State of South Australia and or any other Act or Acts of Parliament or any by-laws rules or regulations made under or in pursuance of any such Act or Acts or purporting so to be and will comply therewith within the time limited therein for complying therewith. If the Tenant fails to comply with any statutory or regulatory obligations the Landlord may comply therewith (but it not be obligatory for the Landlord to do so) and all costs charges and expenses incurred by the Landlord in so doing will be a debt due and recoverable from the Tenant in the same manner in all respects as the rent is recoverable;
- 9.6.2 take such precautions against fire on and in respect of the Premises as are or may from time to time be required under or in pursuance of any Statute now or hereafter in force or which may be required by any authority (whether Governmental municipal civic or other) having jurisdiction in relation thereto and also at the Tenant's own expense in all things, do all such other acts matters and things in relation to fire safety as are or may from time to time be directed or required to be done or executed (whether by the owner or occupier of the Premises) by any authority (whether Governmental municipal civic or other) having jurisdiction in relation thereto pursuant to any law now or hereafter in force.

## 9.7 Use of Premises and Provision of Emergency Number

The Tenant must:

- 9.7.1 advise the Landlord (or where applicable the Landlord's Managing Agent) of the private address and telephone number of the Tenant's nominated emergency after hours contact and must keep the Landlord or the Landlord's Managing Agent informed of any change of such address or telephone number;
- 9.7.2 secure the Premises against authorised entry at all times when the Premises are left unoccupied and the Landlord reserves the right to enter upon the Premises and secure the Premises if left unsecured;
- 9.7.3 not do anything whereby the Services such as the working or efficiency of the air conditioning plant servicing the Building or the Premises may be affected;
- 9.7.4 upon the cessation of the Tenant's right to occupy the Premises, deliver to the Landlord or the Landlord's Agent all keys and or access cards to the Premises; and
- 9.7.5 observe the Rules and Regulations.



## 9.8 Restrictions on Use

The Tenant must not:

- 9.8.1 use or permit to be used for other than their designed purposes any of the fixtures or fittings in the Premises or the Building;
- 9.8.2 store or use inflammable or dangerous substances upon the Premises (except as may be necessary for the ordinary conduct of the Permitted Use of the Premises by the Tenant in which case the Tenant undertakes to notify the Landlord in writing of the maximum quantity of any such inflammable or dangerous substance that the Tenant intends to store on the Premises);
- 9.8.3 cause permit or allow on the Premises or in the Building anything which in the reasonable opinion of the Landlord may become a nuisance or disturbance obstruction or cause of damage whether to the Landlord or to other tenants or users of the Building nor use the Premises in any noisy noxious or offensive manner;
- 9.8.4 do any act or thing, or permit any activities which may discredit the Landlord;
- 9.8.5 obstruct or interfere with any of the entrances of the Building or Common Areas;
- 9.8.6 permit any sign advertisement name or notice to be placed on any part of the Premises or the Building where such sign advertisement name or notice is of an incongruous or unsightly nature having regard to the character and use of the Building and prior to the installation or placement of any sign advertisement name or notice the Tenant must:
  - (a) obtain the Landlord's prior written consent; and
  - (b) obtain the prior consent of any relevant statutory or regulatory authority;
- 9.8.7 use or permit to be used any radio record player tape or video recorder television loudspeaker screen or other like equipment likely to be heard or seen from outside the Land;

## 9.9 Heavy Machinery

- 9.9.1 The Tenant must not bring upon the Premises any heavy machinery or other plant or equipment not reasonably necessary or proper for the conduct of the Tenant's permitted use of the Premises. In no circumstances must the Tenant bring upon the Premises any heavy machinery or other plant or equipment:-
  - (a) of such nature or size or weight as to cause or (in the reasonable opinion of the Landlord) be likely to cause any structural or other damage to the floors or walls or any other parts of the Premises, the Building or the Land, or
  - (b) of such construction or manufacture as to cause to emanate therefrom any noise or vibration or noxious odour fume or gas that could pervade the Premises or escape therefrom to the discernible notice of any person outside the Premises.

9.9.2 Prior to bringing upon the Premises any heavy machinery or other plant or equipment permitted to be brought upon the Premises the Tenant must inform the Landlord of the Tenant's intention so to do and the Landlord or the Landlord's architects or engineers may direct the routing installation and location of all such machinery plant and equipment . The Tenant must observe and comply with all such directions and any reasonable fees payable to the Landlord's architects or engineers in connection with ascertaining the safest and most favourable and convenient method of routing installing and locating such machinery plant and equipment as aforesaid must be paid by the Tenant on demand.

#### **9.10 Locks and Keys**

The Tenant must not tamper with or change any lock of the Premises or have any keys of such locks cut without the consent of the Landlord or its agent. The Tenant will pay for any keys or change required to any lock and in the event of the Landlord or its agent being required to open the Premises the Tenant will pay a reasonable fee fixed by the Landlord or the Landlord's agent.

#### **9.11 Use of Conduits**

The Tenant must allow the Landlord and other occupiers of the Land the free and uninterrupted passage of gas water and electricity through and along the services including electrical services situated under in or on the Premises.

#### **9.12 Blinds and Awnings**

The Tenant must not erect or affix any blinds or awnings to the outside of the Premises or any blinds to the interior of the windows display windows or doors thereof

or affix any fittings to the floors walls or ceilings of the Premises without the prior consent in writing of the Landlord which consent may be granted or refused or granted subject to conditions in the discretion of the Landlord.

#### **9.13 Airconditioning**

9.13.1 Where any plant machinery or equipment for heating cooling or circulating air is provided or installed by the Landlord in the Premises or in the Building for the benefit of tenants of the Building ("**airconditioning plant**"):

- (a) the Tenant must comply with and observe the reasonable requirements of the Landlord in respect of the airconditioning plant;
- (b) to the maximum extent permitted by law, the Landlord will be under no liability to the Tenant in respect of the Landlord's inability or failure to operate service maintain replace or repair the airconditioning plant at any time for any reason and the Tenant acknowledges that the Landlord does not warrant that the airconditioning plant (if any) is suitable or adequate for the business to be conducted in the Premises by the Tenant;
- (c) the Tenant must permit the Landlord and all persons authorised by the Landlord at all reasonable times on giving to the Tenant reasonable prior notice (except in the case of emergency where no notice is required) to enter the Premises to view the state of repair of the

airconditioning plant and there remain for the purpose of carrying out any necessary or desirable maintenance servicing or repair to or replacement of the airconditioning plant.

- 9.13.2 Where any airconditioning plant is installed in the Premises or the Building for the exclusive use of the Tenant, the Tenant must keep such airconditioning plant in good repair, condition and working order and must pay all costs of operating and maintaining the same.

#### 9.14 Electricity Supply

If the Landlord and the Tenant have entered into an agreement as to the supply by the Landlord to the Tenant of electricity for the Premises then the terms and conditions of such agreement will apply to the parties and any breach by the Tenant of that agreement will be deemed to be a breach by the Tenant of this Lease. In the absence of any such agreement between the Landlord and the Tenant, the following provisions apply:

- 9.14.1 If at the Commencement Date of this Lease the Landlord supplies electricity to the Premises and requires the Tenant to purchase such electricity from the Landlord, the Tenant must pay to the Landlord for all such electricity at such rate as the parties may agree from time to time and in the absence of such agreement at the maximum rate applicable under the *Electricity (General) Regulations 2012*.
- 9.14.2 Notwithstanding the preceding subclause, there is no obligation on the Landlord to supply or continue to supply electricity to the Premises and upon giving at least 60 days prior written notice to the other either:-
- (a) the Landlord may elect to cease selling electricity to the Tenant, or
  - (b) the Tenant may elect to cease purchasing electricity from the Landlord.
- 9.14.3 If either the Landlord elects to cease selling electricity to the Tenant or the Tenant elects to cease purchasing electricity from the Landlord in accordance with the preceding subclause, the Tenant must on or before the time at which such sale and purchase is to cease pursuant to the notice given in accordance with the preceding subclause,
- (a) enter into a contract to purchase electricity for the Premises from a licensed electricity retailer of the Tenant's choice,
  - (b) ensure that any such contract contains a provision that such electricity retailer must provide details to the Landlord concerning the Tenant's consumption of electricity in or in relation to the Premises,
  - (c) install at no cost to the Landlord such new or additional equipment and meters as may reasonably be necessary to supply and record the supply of electricity to the Premises.
- 9.14.4 If the Tenant is supplied electricity via an Inset Network (as defined in the *Electricity (General) Regulations 2012*) on the Land, the Tenant must pay to the Landlord the Tenant's share of Inset Network charges such share to be as is reasonably determined by the Landlord from time to time taking into account the quantum of electricity provided to the Premises and the quantum

of electricity provided to other premises situate on the Land.

- 9.14.5 Save to the extent caused or contributed to by the Landlord's negligence, the Landlord shall not be liable to the Tenant for any failure of electricity supply to the Premises.

## 10. TENANT GOVERNANCE

At the Landlord's request, the Tenant will provide to the Landlord:

- 10.1 a copy of its constitution;
- 10.2 a copy of any rules or by-laws of the Tenant in existence at the Commencement Date;
- 10.3 within 28 days of any amendments being made to the Tenant's constitution, rules or by-laws, a copy of those amendments;
- 10.4 by 30 June in each year a copy of the annual report of the Tenant including the balance sheets and auditor's report;
- 10.5 by 30 June in each year a copy of the Tenant's adopted budget within 28 days of adoption;
- 10.6 upon request from the Landlord a schedule of all subleases or other tenancies relating to the Premises; and
- 10.7 upon request from the Landlord or any employee, agent or contractor to examine and take copies of all accounts records and bank records of the Tenant and/or the minutes or any meeting of the Tenant or any committee of the Tenant.
- 10.8 any other documents that regulate the Tenant's governance and operations.
- 10.9 any information in relation to the Tenant's use and occupation of the Premises and finances reasonably required by the Landlord and will permit, upon request from Landlord or any employee, agent or contractor to examine and take copies of all account books and bank books of the Tenant and/or the minutes or any meeting of the Tenant or any committee of the Tenant.

## 11. INSURANCE

### 11.1 Tenant's Insurance

- 11.1.1 The Tenant must during the entire term hereof and any extensions hereto keep in full force and effect:-
  - (a) a policy of public risk insurance with respect to the Premises and the business or businesses carried on in the Premises in which the limits of public risk must not be less than the amount referred to in Item 8 of Schedule 1. Such policy must include an extension to cover the Tenant's legal liability in respect of death or injury to any person and damage to property of any such person or to the Premises and must include an extension to cover the Tenant's liability in respect of the Landlord's property. The policy must name note the interest of the Landlord.

- (b) a policy of insurance covering the plate glass of the Premises and the Tenant's Property contained in or about the Premises to the full replacement value thereof against all usual risks including loss or damage by fire fire fighting activities fusion explosion lighting civil commotion storm tempest earthquake and malicious damage or accidental damage, and any other insurances required by law or which the Landlord reasonably requires for the amount the Landlord reasonably requires.

- 11.1.2 The Tenant must use the Tenant's best endeavours to ensure that each such policy contains a clause that the insurer will not cancel or change the insurance without first giving the Landlord thirty days prior written notice. The policy or a copy thereof or a certificate of insurance must be produced by the Tenant to the Landlord at the Landlord's place of business upon request in writing being made by the Landlord for the production thereof.

## 11.2 Insurance not to be affected

- 11.2.1 The Tenant must not do or store nor cause permit or suffer to be done or to be stored in or upon or in connection with the Premises anything whereby any policy or policies of insurance now effected or which may hereafter be effected on the Premises or any part thereof or on any adjoining premises belonging to the Landlord may be invalidated or become void or voidable or whereby any increased rate of premium may become payable under any such policy or policies of insurance.

- 11.2.2 Without prejudice to the preceding sub-clause, the Tenant must from time to time on demand by the Landlord pay to the Landlord all extra or excess premiums (if any) for all and any insurance effected by the Landlord (and if the Premises are or become part of land to which either the *Strata Titles Act* or the *Community Titles Act* applies, the body corporate) in relation to the Land and the buildings thereon and or the Premises required on account of extra risk caused directly or indirectly by the use to which the Premises are

put by the Tenant and or required by reason of any breach by the Tenant of any covenants in this Lease.

## 12. INDEMNITY, RELEASE AND RISK

### 12.1 Indemnity

The Tenant indemnifies the Landlord against all claims, actions, damages, losses, costs and expenses of any nature which the Landlord may suffer or incur or for which the Landlord may become liable in connection with:

- 12.1.1 the Tenant's use or occupation of the Premises;
- 12.1.2 the overflow or leakage of water or any other substance into or from the Premises or arising out of any faulty fixture or fitting of the Tenant;
- 12.1.3 any accident or damage to property or injury or death suffered by any person arising from any occurrence in or near the Premises to any person or property using or near the Premises arising wholly or in part by reason of any act or omission by the Tenant and persons under the control of the Tenant;

12.1.4 any act or omission of the Tenant;

12.1.5 any fire from the Premises;

12.1.6 any breach of this Lease by the Tenant;

save to the extent that any such claim, action, damages, losses, costs and expenses are caused or contributed to by the negligent or wilful act or omission of the Landlord.

## 12.2 Release

The Tenant releases the Landlord from all actions, liabilities, penalties, claims or demands for any damage, loss, injury or death occurring in the Premises, the Building and the Land except to the extent that it is caused by the Landlord's negligence.

## 12.3 Tenant to Occupy Premises at own Risk

The Tenant occupies and uses the Premises and the Land at the Tenant's sole risk.

## 13. TENANT'S YIELDING UP OBLIGATIONS

13.1 The Tenant must immediately prior to vacating the Premises at the expiration or sooner determination of this Lease (or in the case of the determination of the Term of this Lease within a reasonable time after such determination):

13.1.1 complete any repairs and maintenance which the Tenant is obliged to carry out under this Lease;

13.1.2 remove all of the Tenant's Property in or on the Premises or the Land and immediately make good any damage caused by such removal;

13.1.3 wash down the Premises and treat as previously treated all internal surfaces of the Premises by painting staining polishing or otherwise to a specification reasonably approved by the Landlord and to the reasonable satisfaction of the Landlord;

13.1.4 replace all damaged and non-operative light bulbs and fluorescent tubes in the Premises with new light bulbs and fluorescent tubes; and

13.1.5 thoroughly clean the Premises throughout, remove all refuse therefrom leaving the Premises in a clean, tidy, secure and safe condition;

13.1.6 comply with all reasonable requirements and directions of the Landlord in respect of all removal and reinstatement works;

13.1.7 hand over to the Landlord all keys and other security devices for the Premises which the Tenant has in its possession or control.

13.2 If the Tenant does not complete such removal and making good on the expiration of the Term of this Lease (or in the case of the determination of the Term of this Lease within a reasonable time after such determination) then (without prejudice to any other rights of the Landlord) the Landlord may undertake such obligations and the Tenant must repay on demand all costs and expenses incurred by the Landlord in so doing.



- 13.3 In addition to the preceding subclause, the Landlord may elect not to effect such removal of the Tenant's Property (including all partitions, alterations and additions) in which case the Landlord may by notice in writing given to the Tenant notify the Tenant that unless the Tenant has effected such removal within fourteen (14) days of the date on which such notice is given such partitions alterations or additions not removed by the Tenant will be forfeited to the Landlord and where the Tenant fails to comply with such notice such partitions alterations and additions will at the expiration of such fourteen (14) day period become the absolute property of the Landlord.
- 13.4 Until such time as the Tenant has complied with its obligations under clause 13.1 or the date upon which the same have been forfeited to the Landlord pursuant to the preceding subclause (whichever is the earlier) ("**the compliance date**"), the Tenant must pay by way of damages to the Landlord an amount which represents the rent payable immediately prior to the expiration or termination of this Lease calculated on a daily basis multiplied by the number of days between the compliance date and the date of expiration or termination of this Lease.

#### 14. LANDLORD'S OBLIGATIONS AND RIGHTS

##### 14.1 Quiet Possession

Provided that the Tenant pays the rent and all other outgoings and performs and observes the terms conditions and covenants on the Tenant's part to be performed or observed herein contained or implied may during the term or any extension thereof subject to the provisions of this Lease, the Tenant may quietly enjoy the Premises without unlawful interruption by the Landlord or any person lawfully claiming under or in trust for the Landlord.

##### 14.2 Reservation of Services

The Landlord reserves the right for itself and for all others authorised by the Landlord the passage of any air conditioning equipment, fire sprinkler systems, pipes, ducts, cables, wiring, communications, water sewerage and drainage connections and any other services through or along or in or into the Premises and also access to and through the Premises at any time for the purpose of installing, maintaining or repairing any such equipment, systems, pipes, ducts, cables, wirings, connections and Services.

##### 14.3 Costs of Proceedings

If the Landlord may without fault on the Landlord's part be made a party to any litigation commenced by or against the Tenant, the Tenant must pay to the Landlord on demand by the Landlord all reasonable legal fees and disbursements (as between solicitor and client) incurred by the Landlord in connection therewith.

##### 14.4 Landlord's Right to Add to Building

14.4.1 The Landlord may at any time during the Term enlarge vary or reduce any building or buildings situate on the Land and in so doing (but without in any way limiting the generality of the foregoing) may:

- (a) acquire or dispose of any land;
- (b) permanently encroach upon any Common areas, portions of the Land

and/or any car park;

- (c) employ or use the air space above or below any part of any Common areas or any car park;
- (d) erect additional floors above or below any part of the said building or buildings;
- (e) provide multi-deck parking facilities;
- (f) strata title the building or any one or more of the floors of the building (in which event the Tenant will execute all relevant documents provided same do not prejudice the Tenant's rights to occupy the Premises upon the terms contained in this Lease);
- (g) interrupt the water gas electrical air conditioning or other services to the Premises;

14.4.2 The Landlord must in carrying out such works use reasonable endeavours to minimise so far as may be practicable any inconvenience to or interruption to the business of the Tenant.

#### **14.5 Right to Enter**

14.5.1 At any time during the Term of this Lease the Landlord may (except in an emergency when no notice is required) enter the Premises after giving the Tenant reasonable notice:

- (a) to view the state of repair and condition of the Premises;
- (b) carry out any works on the Land or in or to the Building (including alterations and redevelopment), but in these circumstances the Landlord will take reasonable steps (except in emergencies) to minimise interference with the Tenant's use;
- (c) restrict access to the Land including parking areas but in these circumstances the Landlord will take reasonable steps (except in emergencies) to minimise interference with the Tenant's use;
- (d) redirect pedestrian or vehicular traffic into, out of or through the Land;
- (e) close the Building in an emergency;
- (f) use, maintain, repair, alter and add to Building Services to or in the Premises, but the Landlord must take reasonable steps (except in emergencies) to minimise interference with the Tenant's use;
- (g) exclude or remove any person from the Land;
- (h) to do anything the Landlord must or may do under this Lease or pursuant to any legal obligation;
- (i) to carry out and observe the Landlord's maintenance and repair obligations as set out in Schedule 2;and



and the Tenant will not be permitted to make any claim or abate any payment if the Landlord exercises any of its rights under this clause 14.5.

- 14.5.2 If the Landlord or the Landlord's agents or contractors find any defect decay or want of reparation in the Premises or find any state or condition thereof contrary to any covenant or agreement on the part of the Tenant contained in this Lease, the Landlord, or the Landlord's agent or contractor may give to the Tenant notice in writing to make good repair restore or amend the same within a reasonable time to be therein stated and the Tenant must within such time sufficiently and in good and proper and professional manner make good repair restore or amend the same to the reasonable satisfaction of the Landlord and if the Tenant fails to comply with any such notice the Landlord may (but is not obliged to do so) by or with the Landlord's attorney agent and or contractors enter into and upon the Premises and carry out the requirements of such notice (causing as little disturbance to the Tenant as is practicable). All costs charges and expenses incurred by the Landlord in so doing will be a debt due from the Tenant to the Landlord payable on demand and recoverable in the same manner in all respects as the rent hereby reserved.

#### **14.6 Interest on Overdue Amounts**

If the Tenant does not pay an amount when it is due, and does not rectify such non-compliance within 14 days of written demand then it must pay interest on that amount on demand from when the amount became due until it is paid in full. Interest is calculated on outstanding daily balances of that amount at the Default Rate.

### **15. DAMAGE TO BUILDING OR PREMISES**

- 15.1 Subject to clause 15.2, if the Building of which the Premises forms part is damaged:-
- 15.1.1 the Tenant is not liable to pay rent or Outgoings or other charges that are attributable to the period during which the Premises cannot be used or are inaccessible due to that damage;
- 15.1.2 if the Premises are still useable but their useability is diminished due to the damage, a fair and just proportion of the rent, Outgoings and other charges payable by the Tenant pursuant to this Lease having regard to the nature of the damage shall abate from the date of the damage until the date that the Premises have become useable. If any dispute as to the amount of rent, Outgoings and charges to be abated arises, the same will be determined by a licensed valuer appointed by the President of the South Australian Division of the Australian Property Institute (or should that body have ceased to exist, the President or other principal officer for the time being of such body or association as then serves substantially the same objects) at the request of the Landlord;
- 15.1.3 if the Landlord notifies the Tenant in writing that the Landlord considers that the damage is such as to make its repair impractical or undesirable, the Landlord or the Tenant may terminate this Lease by giving not less than seven days' notice in writing and neither party shall have any claim for or right to recover any compensation by reason of such termination save in respect of any antecedent breach or default or any claim regarding the cause of such damage;

15.1.4 if the Landlord fails to repair the damage within a reasonable time after the Tenant requests the Landlord in writing so to do, then the Tenant may terminate this Lease by giving not less than seven days' notice in writing of termination to the Landlord.

## 15.2 Damage caused by Tenant

If the damage to the Building was caused or contributed to by the wrongful act or negligence of the Tenant no proportion of the rent, Outgoings and charges shall be abated and the Tenant will not be entitled to terminate this Lease.

## 15.3 Set off

The Landlord may, by notice to the Tenant, set off any amount due by the Tenant to the Landlord under this Lease or otherwise against any amount due by the Landlord to the Tenant under this Lease.

## 16. REDEVELOPMENT AND DEMOLITION

16.1 The Tenant acknowledges that:-

16.1.1 the Landlord may during the term of this Lease decide to refurbish, repair, redevelop or extend the Premises and/or the Building and land of which the Premises form part;

16.1.2 the Landlord will suffer harm expense and loss if the Landlord elects to do so and is unable to obtain vacant possession of the Premises;

16.1.3 the Landlord has only agreed to the Tenant's offer to lease the Premises on the condition the Landlord can obtain vacant possession of the Premises for the purpose of so refurbishing, repairing, redeveloping or extending as and when required by the Landlord; and

16.1.4 this Lease is expressly subject to a condition precedent that the term of this Lease be subject to the Landlord's right to refurbish, redevelop or extend.

16.2 If during the Term or any extension of the Term of this Lease the Landlord elects to refurbish, repair, redevelop or extend the Premises, the Building or the Land of which the Premises form part or any part thereof and the Landlord provides to the Tenant details of the proposed repair, redevelopment or extension sufficient to indicate a genuine proposal to refurbish, repair, redevelop or extend within a reasonably practicable time after the date upon which the Landlord requires vacant possession of the Premises, then the Landlord may on or after the commencement of this Lease:

16.2.1 give to the Tenant not less than twelve (12) months written notice requiring the Tenant to relocate its business to other premises in the Building or on the Land (the "**new premises**") specifying the date on which the Landlord requires vacant possession of the Premises and requires the Tenant to relocate to the new premises (the "**relocation date**") whereupon:-

(a) this Lease will terminate on the relocation date; and

(b) not less than seven (7) days prior to the relocation date the Tenant must upon receipt of the same from the Landlord execute and deliver to the Landlord:-

- (i) a surrender of this Lease in registrable form by mutual consent and for no monetary or other consideration effective from the relocation date; and
  - (ii) a lease of the new premises from the relocation date which lease will be upon the terms and conditions hereinafter appearing; and
  - (iii) the Tenant's registered duplicate copy of this Lease; and
- (c) the Tenant must vacate the Premises and relocate to the new premises on the relocation date.

16.2.2 the relocation to the new premises will be upon the following terms and conditions:-

- (a) the new premises must (in the reasonable opinion of the Landlord) be of comparable quality and utility, and be a fair and reasonable distance from the Premises;
- (b) the Landlord will, at its cost, move the Tenant's stock from the Premises to the new premises;
- (c) the lease of the new premises shall be on the same terms and conditions as this Lease (changed as necessary),

and the Tenant may, not later than one month (time being of the essence) of receiving the written notice of relocation from the Landlord, notify the Landlord in writing that the Tenant does not intend to enter into a lease for the new premises, in which case the Tenant shall vacate the Premises on the relocation date without any right to compensation or damages from the Landlord by reason of termination of this Lease.

16.2.3 give to the Tenant not less than twelve (12) months written notice requiring the Tenant to vacate the premises specifying the date on which the Landlord requires vacant possession of the Premises (the "termination date") whereupon:-

- (a) this Lease will terminate on the termination date; and
- (b) not less than seven (7) days prior to the termination date the Tenant must upon receipt of the same from the Landlord execute and deliver to the Landlord such documents as the Landlord reasonably requires to effect a surrender of this Lease as at the termination date; and
- (c) the Tenant must vacate the Premises on the termination date.

and the Tenant may at any time after receipt of notice of termination from the Landlord terminate this Lease upon giving not less than seven (7) days prior notice in writing to the Landlord.

### 16.3 Damage to Goods or Person

Except to the extent caused by the negligent or wilful act or omission of the Landlord, its servants or agents, the Landlord its attorney or agent shall not be under any liability

to the Tenant for any loss expense or damage sustained by the Tenant or any invitee of the Tenant arising out of personal injury or destruction of or damage to goods chattels furniture or effects howsoever caused including by water gas or electricity bursting overflowing leaking or escaping (as the case may be) from any water gas electrical apparatus installation fitting pipe sewer wiring roof or roof gutter down pipe or storm water drain (as the case may be) on in or connected to or appurtenant to the Premises and/or the Building.

## 17. RULES AND REGULATIONS

- 17.1 The Landlord may from time to time make such reasonable rules and regulations that the Landlord considers necessary for the management, safety, security, care of or cleanliness of the Premises or the Building.
- 17.2 The Landlord reserves the right to amend from time to time the Rules and Regulations.
- 17.3 The Rules and Regulations bind the Tenant when it receives notice of the Rules and Regulations from the Landlord.
- 17.4 If there is any inconsistency between this Lease and the Rules and Regulations, then this Lease prevails.
- 17.5 A failure by the Tenant to comply with the Rules and Regulations is a breach of this Lease.

## 18. EXTENSION OF TERM

If not more than six months nor less than three months prior to the expiration of the Term the Tenant gives to the Landlord notice in writing of its desire to extend the Term and if the Tenant is not in breach of any of the covenants agreements and conditions on the part of the Tenant to be performed and complied with, the Tenant (at the Tenant's cost and expense in all things) will be entitled to an extension of the Term for the further period referred to in Item 9 of Schedule 1 at a rent to be fixed in the manner provided by the terms of this Lease but otherwise upon the same terms and conditions as are herein contained with the exception of this right of renewal.

## 19. ESSENTIAL TERMS, RE-ENTRY, BREACH, DAMAGES

### 19.1 Essential Terms

The clauses of this Lease referred to in Item 11 of Schedule 1 are essential terms of this Lease and the Landlord may at its option treat any breach or default by the Tenant in the observance or performance of its obligations under any of such clauses as a repudiation by the Tenant of this Lease.

### 19.2 Power of Re-entry

If:

- 19.2.1 the rent or any part of it is unpaid for fourteen (14) days after any of the days on which it should have been paid (although no formal or legal demand may have been made for payment); or
- 19.2.2 the Tenant commits or permits to occur any other breach or default in the due and punctual observance and performance of any of the terms of this Lease

and fails to remedy the breach within a period of 14 days of written notice from Landlord (or such shorter time as the Landlord may in any particular case reasonably stipulate); or

- 19.2.3 any property in or on the Premises is seized or taken in execution under any judgment or other proceedings; or
- 19.2.4 the Tenant ceases to be able to pay its debts as they become due; or
- 19.2.5 any step is taken to enter into any arrangement between the Tenant and its creditors; or
- 19.2.6 any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person of the whole or any part of the Tenant's assets or business; or
- 19.2.7 the Tenant is deregistered or dissolved or any step is taken by any person towards that;

then the Landlord or the Landlord's attorney or duly authorised agent, solicitor or representative may without notice to the Tenant re-enter into and upon the Premises or any part thereof in the name of the whole and use and enforce all such ways and means and adopt all such measures as may be necessary or expedient for the purpose of effecting such re-entry by force or otherwise as the occasion may require without being liable for any loss expense damage action suit or proceeding or cost and to hold and enjoy the Premises as if these presents had not been made and thereupon the Tenant's leasehold interest in the Premises will cease and determine.

### **19.3 Damages generally**

The Landlord's entitlement to recover losses, damages, costs or expenses will not be affected or limited by:

- 19.3.1 the Tenant abandoning or vacating the Premises;
- 19.3.2 the Landlord re-entering the Premises and/or terminating the Tenant's leasehold interest in the Premises;
- 19.3.3 the Landlord accepting the Tenant's repudiation;
- 19.3.4 conduct of the parties which may or shall constitute a surrender by operation of law.

## **20. NOTICES**

Any notice or other document required to be given or served under this Lease may be given or served:

- 20.1 by personal service or hand delivery, which will be deemed to have been given upon receipt;
- 20.2 by ordinary or registered post or facsimile transmission to the last place of business or residence known of the party, and any notice or other document will when given or served by either of the methods mentioned above be deemed to have been given or served and received by the other party three (3) days after the date of posting or delivery at the document exchange whether actually received or not AND in the case

of any notice or document required to be served or given by the Landlord to the Tenant the same may be signed on behalf of the Landlord by its agent, manager, secretary assistant, secretary or solicitor and may be either addressed or delivered to the Tenant at the address of the Premises or such other address of the Tenant as the Tenant may specify in writing from time to time.

## 21. COSTS

- 21.1 Each party will bear its own costs in respect of the preparation, negotiation, execution and stamping of this Lease.
- 21.2 Subject to any limits imposed by the Act the Tenant must pay all stamp duty and registration fees in respect of this Lease and any renewal, extension, surrender, assignment or transfer of this Lease and any other incidental documents including any lease plan costs.

## 22. MISCELLANEOUS

### 22.1 Holding Over

If the Tenant continues in occupation of the Premises after the expiration of the Term or any extension thereof with the consent of the Landlord the Tenant will thereupon become or be deemed to be a monthly tenant of the Landlord at a rent determined in accordance with the provisions of this Lease, and such tenancy will be subject to such of the conditions and covenants contained in this Lease as are applicable to a monthly tenancy.

### 22.2 Waiver

No waiver by the Landlord of any breach or non-observance by the Tenant of any covenant herein contained shall constitute a general waiver of the obligations of the Tenant.

### 22.3 Acceptance of Rent Arrears

In respect of the Tenant's obligations to pay rent the acceptance by the Landlord of arrears of or any late payment of rent will not constitute a waiver of the essentiality of the Tenant's obligations to pay rent on the dates hereinbefore set out for payment of rental or in respect of the Tenant's continuing obligation to pay rent during the Term.

### 22.4 Kiosks and Marquee

22.4.1 The Landlord may erect from time to time during the term and remove and re-erect kiosks, marquees and other temporary or permanent structures in any part of the Land (not comprising the Premises) and may grant to any person the exclusive use of all or any part thereof for such purposes for such periods and upon such terms and conditions as the Landlord may in its absolute discretion think fit.

22.4.2 The Tenant may request the consent of the Landlord to erect a marquee on the Premises for a particular day or days, where a sporting game or match will be held. If the Landlord's consent is granted the such consent will be subject to certain conditions and requirements of the Landlord from time to time. Such conditions will include an obligation on the Tenant to ensure that such marquee is weighted to prevent damage to sub-surface irrigation.

**22.5 No Caveat**

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

**22.6 Landlord and Tenant Act**

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

**22.7 Power of Attorney**

If the Landlord becomes entitled to terminate this Lease and re-enter and take possession of the Premises (a statutory declaration of any duly authorised officer, employee or agent of the Landlord will be conclusive evidence for the purpose of the Registrar-General) then the Tenant irrevocably appoints the Landlord as the attorney of the Tenant to execute any documents and perform any acts the Landlord requires to give full effect to the power of re-entry under the *Real Property Act 1886 (SA)*. The Tenant must execute any documents and perform any acts the Landlord requires to give full effect to the power of re-entry under the *Real Property Act 1886 (SA)*.

**22.8 Special Conditions**

This Lease is subject to the special terms and conditions (if any) specified in Item 10 of Schedule 1 and if there is any inconsistency between any such special terms and conditions and any of the provisions of this Lease and/or the Rules and Regulations, then the Schedules and any such special terms and conditions will prevail.



**SCHEDULE 1**

ITEM 1 TENANT (clause 1.19)

Name: **Walkerville Lawn Tennis Club Inc. ABN: 43 516 536 926**

Address: **Creswell Court, Gilberton SA 5081**

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ITEM 2 PREMISES (clause 1.13)

The **portion** of the land comprised in Certificate of Title Register Book Volume **5261** Folio **460** being the area marked on the plan contained in Annexure 3.

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ITEM 3 THE LAND (clause 1.8)

The **whole** of the land comprised in Certificate of Title Register Book Volume **5261** Folio **460**.

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ITEM 4 PERMITTED USE (clause 9.1)

Sporting and recreational facility.

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ITEM 5 TERM (clause 1.22)

A term of **FIVE** years commencing on **1 October 2022 (Commencement Date)** and expiring at 11.59PM on **30 September 2027 (Expiry Date)**.

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ITEM 6 COMMENCING RENT (clause 3)

**\$3,000** per annum plus GST

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ITEM 7 RENT REVIEW (clause 3)

(a) CPI Review Dates: each anniversary of the Commencement Date during the Term

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ITEM 8 PUBLIC RISK INSURANCE (clause 11)

TWENTY MILLION DOLLARS per claim and unlimited in the annual aggregate or such higher amount as the Landlord may from time to time reasonably require.



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ITEM 9 EXTENSION OF TERM (clause 18)

Nil.

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ITEM 10 SPECIAL CONDITIONS (clause 22.8)

1. Child Safe Environment

- 1.1 The Tenant acknowledges that the Town of Walkerville is committed to providing a child safe environment (as defined by the *Children's Protection Act 1993*) at all times. A child safe environment is 'an environment, which is both child-safe and child-friendly, where children are valued and feel respected and encouraged to reach their full potential.'
- 1.2 The Tenant represents to the Landlord that it has fulfilled and will ensure that it continues to fulfil its requirements under the *Children's Protection Act 1993* in relation to occupying the Premises for the Permitted Use.
- 1.3 The Tenant must act in the best interests of the community at large.
- 1.4 The Tenant must at the request of the Landlord provide a current police clearance or the relevant criminal history screening certificate under relevant legislation for the Tenant or any of the Tenant's officers, volunteers, members, employees, contractors, tenants and agents who provide direct services to children from the Premises.
- 1.5 If the Landlord makes a request of the Tenant under this special condition, the Tenant must provide the requested documents to the Landlord within 10 Business Days of such request. Failure to do so will be considered a breach of an essential term of this Lease.

2. Tenant's Fixtures and Fittings

- 2.1 For the avoidance of doubt, the Tenant acknowledges that the Landlord has no liability or responsibility for any fixtures, fittings and/or other items installed, owned or otherwise brought onto the Premises by the Tenant.
- 2.2 At the expiration or earlier determination of this Lease, if requested in writing by the Landlord, the Tenant may transfer ownership to the Landlord any/all such fixtures and fittings within the Premises, free of any other interests, which are nominated by the Landlord pursuant to this special condition, at an agreed purchase price.

3. Other

- 3.1 The Council and the Lessee acknowledge and agree that the Term of this Lease is less than five (5) years and section 20B of the *Retail and Commercial Lease Act 1995* does not apply to this Lease for the Term (including without limitation any holding over period which exceeds six (6) months) by effect of this Exclusionary Clause

As such, the Lessee acknowledges that 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.

- 3.2 In relation to the tennis court surfaces and fixtures associated with the use of the tennis court surfaces (**Tennis Court Surfaces**):
- 3.2.1 The respective obligations of the Council and the Lessee are set out in the Maintenance Schedule (**Schedule 2**).
- 3.2.2 The Club must maintain the Tennis Court Surfaces to a reasonable standard required for club law tennis
- 3.3 The Lessee will provide Council a duplicate key for all locks that are or may in the future be placed on the gates, doors and/or fences surrounding the Premises.
- 3.4 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.
- 3.5 The Walkerville Lawn Tennis Club will not be responsible for the reimbursement of Council lighting electricity costs for the Premises during the July to September quarter of each year during the Term of the Lease.
- 3.6 The Council costs for electricity consumption will be calculated for each quarter to be the total amount consumed during the months of June, July and August for each year applied for each of the following three quarters.

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ITEM 11 ESSENTIAL TERMS (clause 19)

Clauses 3.1, 4, 5, 6, 7, 8, 9.1, 9.3, 10, 11, 12, 17, 22.8 and any obligations imposed on the Tenant pursuant to Item 10 of this Schedule

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## **SCHEDULE 2 - Maintenance Schedule**

This schedule outlines the particular responsibilities of Landlord and the Tenant, where applicable, and must be read in conjunction with relevant provisions within this Lease including **clauses 6.1 and 14.5**.

### **1. Building External**

<b>Item</b>	<b>Tenant</b>	<b>Landlord</b>
Stormwater system	<ul style="list-style-type: none"> <li>• Clean gutters, downpipes and stormwater drains - keep free of debris to prevent blockages</li> </ul>	<ul style="list-style-type: none"> <li>• Repair/replace as required (based on Landlord's capital works programme and budget priorities).</li> </ul>
Windows	<ul style="list-style-type: none"> <li>• Clean glazing</li> <li>• Replace damaged windows, panels or glazing</li> <li>• Minor repair and repaint as required</li> </ul>	<ul style="list-style-type: none"> <li>• Repair replace frames and opening/closing mechanisms.</li> </ul>
Roof and guttering	<ul style="list-style-type: none"> <li>• Keep guttering clean and free of debris at all times</li> </ul>	<ul style="list-style-type: none"> <li>• Repair leaks to the roof and repair or replace roof covering (based on Landlord's capital works programme and budget priorities)</li> </ul>
Doors/locking mechanisms	<ul style="list-style-type: none"> <li>• Key replacement</li> <li>• Keep doors operational - repair (e.g. If door hinge/lock broken, repair replace locks, door coverings</li> <li>• Replace damaged locks</li> </ul>	<ul style="list-style-type: none"> <li>• Replace at end of natural life.</li> <li>• Major works (eg. replacement of damaged doors etc).</li> </ul>
Walls	<ul style="list-style-type: none"> <li>• Wash, clean periodically</li> <li>• Repair and repaint periodically</li> <li>• Remove Graffiti</li> </ul>	<ul style="list-style-type: none"> <li>• Maintain structural stability</li> </ul>
Paint finishes	<ul style="list-style-type: none"> <li>• Touch up where damaged. Repaint as required</li> </ul>	<ul style="list-style-type: none"> <li>• Nil responsibility</li> </ul>
Signs	<ul style="list-style-type: none"> <li>• Maintain and replace (observing Landlord's requirements for installation of signage)</li> </ul>	<ul style="list-style-type: none"> <li>• Nil responsibility</li> </ul>
General Cleaning	<ul style="list-style-type: none"> <li>• Full responsibility</li> </ul>	<ul style="list-style-type: none"> <li>• Nil responsibility</li> </ul>

## 2. Building Internal

Item	Tenant	Landlord
Water, sewer and gas piping	<ul style="list-style-type: none"> <li>• Keep free from blockages – unblock drains.</li> <li>• Repair damage.</li> <li>• Minor works.</li> <li>• Clean fittings.</li> </ul>	<ul style="list-style-type: none"> <li>• Replace at end of useful life.</li> <li>• Major works.</li> </ul>
Hot water system	<ul style="list-style-type: none"> <li>• Responsibility for minor repairs.</li> </ul>	<ul style="list-style-type: none"> <li>• Replace at end of useful life.</li> </ul>
Fire extinguishers and exit lights	<ul style="list-style-type: none"> <li>• Install and maintain.</li> </ul>	<ul style="list-style-type: none"> <li>• Full responsibility for statutory compliance. Cost to be on-charged to tenant in accordance with Clause 1.11 and 5.3.</li> </ul>
Water/waste services - associated fittings.	<ul style="list-style-type: none"> <li>• Clean fittings, e.g. taps, toilet, sinks - replace washers</li> <li>• Replace tapware, sinks, drains and toilets.</li> </ul>	<ul style="list-style-type: none"> <li>• Nil responsibility</li> </ul>
Telecommunications-phone/PABX systems	<ul style="list-style-type: none"> <li>• Full responsibility</li> </ul>	<ul style="list-style-type: none"> <li>• Nil responsibility</li> </ul>
Air conditioning units/thermostats, ducting etc (installed by Landlord)	<ul style="list-style-type: none"> <li>• Maintenance and repair including all testing and servicing.</li> <li>• Running costs.</li> </ul>	<ul style="list-style-type: none"> <li>• Repair and replace as required (based on Landlord's capital works programme and budget priorities unless urgent or a safety hazard)</li> </ul>
Air conditioning units/thermostats, ducting etc (installed by the Tenant)	<ul style="list-style-type: none"> <li>• Maintenance and repair including all testing and servicing</li> <li>• Full responsibility for repair and replacement</li> </ul>	<ul style="list-style-type: none"> <li>• Nil responsibility</li> </ul>
Electrical services, switchboards, distribution boards, and power lighting circuits.	<ul style="list-style-type: none"> <li>• Full responsibility for repair and replacement if damage caused by tenant.</li> </ul>	<ul style="list-style-type: none"> <li>• Full responsibility for statutory compliance.</li> </ul>
Lighting fixtures	<ul style="list-style-type: none"> <li>• Replace lights and globes, ballast's and fuses.</li> </ul>	<ul style="list-style-type: none"> <li>• Nil responsibility</li> <li>• Repair / replace wiring connections.</li> </ul>
Smoke detectors	<ul style="list-style-type: none"> <li>• Full responsibility for repair and replacement if damage caused by tenant.</li> </ul>	<ul style="list-style-type: none"> <li>• Full responsibility for statutory compliance.</li> </ul>
Carpets	<ul style="list-style-type: none"> <li>• Clean - remove all stains</li> <li>• Repair/replace to appropriate finish</li> </ul>	<ul style="list-style-type: none"> <li>• Nil responsibility</li> </ul>

Vinyl/concrete/tiled/other floors.	<ul style="list-style-type: none"> <li>• Clean/polish</li> <li>• Repair replace to appropriate finish</li> </ul>	<ul style="list-style-type: none"> <li>• Nil responsibility</li> </ul>
Internal walls/screens	<ul style="list-style-type: none"> <li>• Clean. Keep free of mould/grime</li> <li>• Repair damage caused by use.</li> <li>• Repair cracking, replace, repaint</li> <li>•</li> </ul>	<ul style="list-style-type: none"> <li>• Maintain structural stability</li> </ul>
Ceilings	<ul style="list-style-type: none"> <li>• Clean, keep free from cobwebs etc Repair, repaint periodically</li> </ul>	<ul style="list-style-type: none"> <li>• Replace due to structural failure, or repair damage caused by roof leaks</li> </ul>
Loose furniture	<ul style="list-style-type: none"> <li>• Full maintenance responsibility</li> </ul>	<ul style="list-style-type: none"> <li>• Nil responsibility</li> </ul>
Replacement of lights and globes	<ul style="list-style-type: none"> <li>• Full maintenance responsibility</li> </ul>	<ul style="list-style-type: none"> <li>• Nil responsibility</li> </ul>
Electrical Tagging and Testing	<ul style="list-style-type: none"> <li>• Nil responsibility</li> </ul>	<ul style="list-style-type: none"> <li>• Full responsibility for statutory compliance. Cost to be on-charged to tenant in accordance with Clause 1.11 and 5.3.</li> </ul>
General cleaning	<ul style="list-style-type: none"> <li>• Full responsibility</li> </ul>	<ul style="list-style-type: none"> <li>• Nil responsibility</li> </ul>
Security Alarms (Maintenance and call-outs)	<ul style="list-style-type: none"> <li>• Full maintenance responsibility</li> </ul>	<ul style="list-style-type: none"> <li>• Nil responsibility</li> </ul>

### 3. External Surfaces

Item	Tenant	Landlord
Line marking of playing surfaces	<ul style="list-style-type: none"> <li>• Full responsibility</li> </ul>	<ul style="list-style-type: none"> <li>• Nil responsibility</li> </ul>
Mowing of playing surfaces	<ul style="list-style-type: none"> <li>• Full responsibility</li> </ul>	<ul style="list-style-type: none"> <li>• Nil responsibility</li> </ul>
Aerating playing surfaces	<ul style="list-style-type: none"> <li>• Full responsibility</li> </ul>	<ul style="list-style-type: none"> <li>• Nil responsibility</li> </ul>
Topdressing playing surfaces	<ul style="list-style-type: none"> <li>• Full responsibility</li> </ul>	<ul style="list-style-type: none"> <li>• Nil responsibility</li> </ul>
Weed / pest spraying of playing surfaces	<ul style="list-style-type: none"> <li>• Full responsibility</li> </ul>	<ul style="list-style-type: none"> <li>• Nil responsibility</li> </ul>
Watering playing surfaces	<ul style="list-style-type: none"> <li>• Full responsibility</li> </ul>	<ul style="list-style-type: none"> <li>• Nil responsibility</li> </ul>
Irrigation system	<ul style="list-style-type: none"> <li>• Management of system</li> </ul>	<ul style="list-style-type: none"> <li>• Maintenance of system</li> </ul>
External Fences	<ul style="list-style-type: none"> <li>• Nil responsibility unless damage caused by tenant.</li> </ul>	<ul style="list-style-type: none"> <li>• Schedule upgrades and replacement (based on capital works programme and budget priorities)</li> </ul>
Carpark surfaces	<ul style="list-style-type: none"> <li>• Not applicable</li> </ul>	<ul style="list-style-type: none"> <li>• Not applicable</li> </ul>
Carpark Linemarking	<ul style="list-style-type: none"> <li>• Not applicable</li> </ul>	<ul style="list-style-type: none"> <li>• Not applicable</li> </ul>
Garden areas	<ul style="list-style-type: none"> <li>• Keep clean and unobstructed.</li> </ul>	<ul style="list-style-type: none"> <li>• Nil responsibility.</li> </ul>
Storage shed	<ul style="list-style-type: none"> <li>• Maintain and repair in good repair and watertight condition</li> </ul>	<ul style="list-style-type: none"> <li>• Replace due to structural failure</li> </ul>
Lighting of road adjacent areas	<ul style="list-style-type: none"> <li>• Nil responsibility</li> </ul>	<ul style="list-style-type: none"> <li>• Full responsibility</li> </ul>
Underground water mains and sewerage pipes	<ul style="list-style-type: none"> <li>• Nil responsibility</li> </ul>	<ul style="list-style-type: none"> <li>• Full responsibility</li> </ul>



**Annexure 3 – Plan of Premises**





**RULES AND REGULATIONS**

1. The Tenant must not:
  - 1.1 smoke in the Building or on the areas outside the Building on the Land;
  - 1.2 put up signs, notices, advertisements, blinds or awnings, antennae or receiving dishes or install vending or amusement machines without the Landlord's approval;
  - 1.3 hold auction, bankrupt or fire sales in the Premises;
  - 1.4 keep an animal or bird on the Premises;
  - 1.5 use a business name which includes words connecting the business name with the Building without the Landlord's approval;
  - 1.6 remove floor coverings from where they were originally laid in the Premises without the Landlord's approval;
  - 1.7 do anything to the floor coverings in the Building which affects any guarantee in connection with them if the Landlord has given the Tenant a notice setting out the relevant terms of the guarantee;
  - 1.8 use any method of heating, cooling or lighting the Premises other than those provided or approved by the Landlord;
  - 1.9 operate a musical instrument, radio, television or other equipment that can be heard outside the Land;
  - 1.10 throw anything out of any part of the Building;
  - 1.11 move heavy or bulky objects through the Building without the Landlord's approval;
  - 1.12 obstruct:
    - 1.12.1 windows in the Premises except by internal blinds or curtains approved by the Landlord;
    - 1.12.2 any air vents, air conditioning ducts or skylights in the Premises; or
    - 1.12.3 emergency exits from the Building or the Premises; or
    - 1.12.4 the Common Areas; or
    - 1.12.5 interfere with directory boards provided by the Landlord.
2. The Tenant must:
  - 2.1 put up signs in the Premises prohibiting smoking if required by the Landlord;
  - 2.2 if the Landlord approves the Tenant's use of a business name which is connected with the Building, terminate any right it has to use that business name on the date it must vacate the Premises;
  - 2.3 participate in any emergency drill of which the Landlord gives reasonable notice;

- 2.4 evacuate the Building immediately and in accordance with the Landlord's directions when informed of any actual or suspected emergency; and
- 2.5 secure the Premises when they are unoccupied and comply with the Landlord's directions about Building security.

RELEASED

IMPORTANT NOTICE

**EXCLUSION OF WARRANTY OF FITNESS FOR PURPOSE**

*Retail and Commercial Leases Act 1995: Section 18*

*Retail and Commercial Leases Regulations 1995: Regulation 7*

**THE LANDLORD DOES NOT WARRANT THAT THE PREMISES 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.**

SIGNED as an agreement

DATED

**THE COMMON SEAL of  
THE CORPORATION OF THE TOWN OF WALKERVILLE**  
was hereunto affixed in the presence of:

.....  
Mayor

.....  
Chief Executive Officer

Date: .....

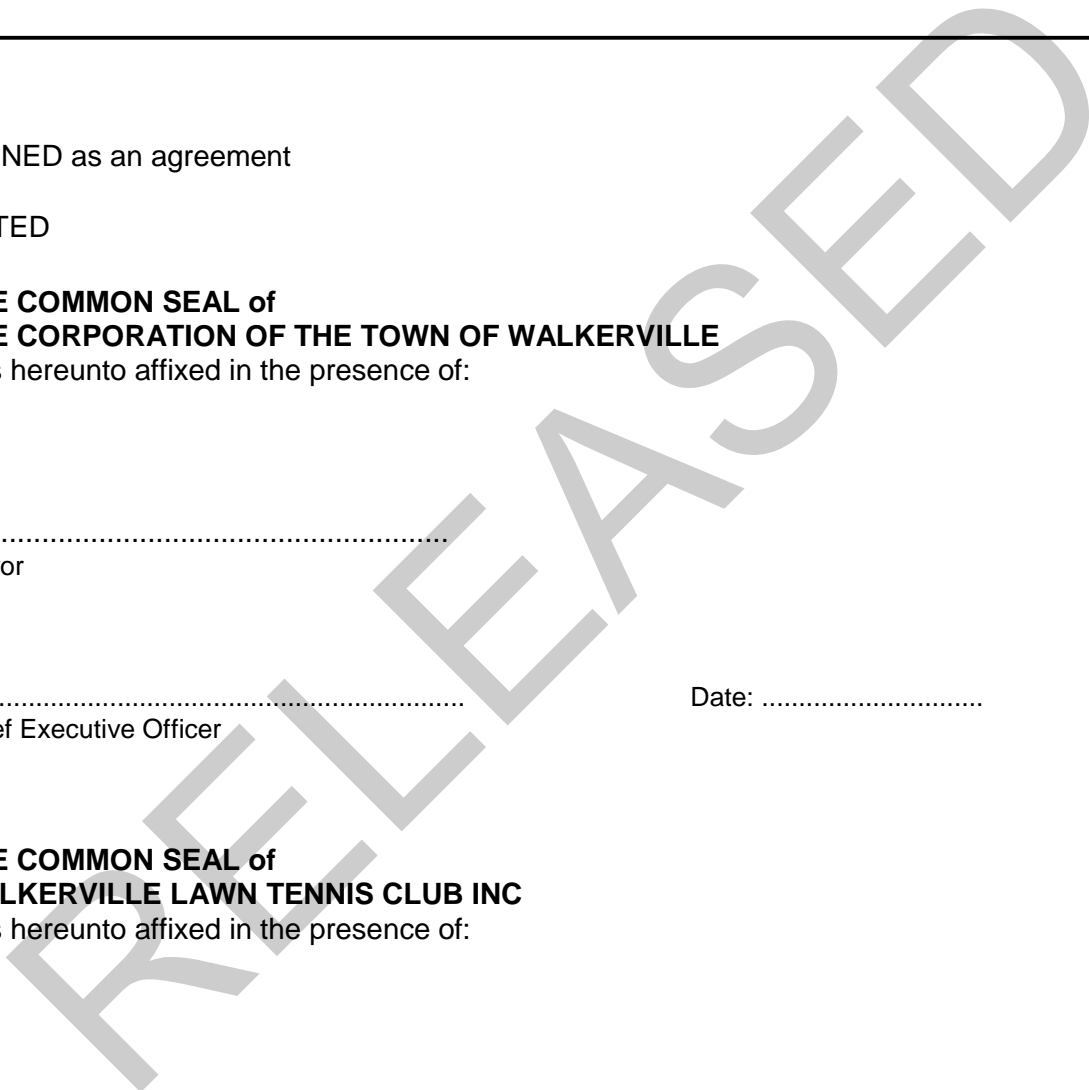
**THE COMMON SEAL of  
WALKERVILLE LAWN TENNIS CLUB INC**  
was hereunto affixed in the presence of:

.....  
President

Date: .....

.....  
Treasurer

Date: .....



**ANNEXURE B – LAWYER’S CERTIFICATE**

**CERTIFIED EXCLUSIONARY CLAUSE UNDER SECTION 20K(3) OF *RETAIL AND COMMERCIAL LEASES ACT 1995 (SA)***

This certificate is given in relation to the following:

Exclusionary clause:

**Item 10 Special Conditions 3.1 of Schedule 1.**

The clause excludes the statutory rights of security of tenure conferred by Part 4A of the *Retail and Commercial Leases Act 1995 (SA)*.

The lease is one of the following premises:

**Creswell Court Gilbertong SA 5081 as delineated on the plan attached as Annexure 3 of the Lease**

The Lessor is:

**The Corporation of the Town of Walkerville**

The prospective lessee is:

**Walkerville Lawn Tennis Club Inc.**

I do not act for the lessor.

I have, at the request of the prospective lessee(s), explained the effect of the exclusionary clause and how Part 4A of the *Retail and Commercial Leases Act 1995 (SA)* would apply in relation to the lease if the lease did not include that clause.

The prospective lessee has given me apparently credible assurances that the prospective lessee was not acting under coercion or undue influence in requesting or consenting to the inclusion of the clause in the lease.

Lawyer signing certificate: .....[full name]

.....

..... [address]

Date:..... Signature: .....