CONFIDENTIAL

TOWN OF WALKERVILLE

Decision Report Item Number **18.1**

Levi Adelaide Holiday Park Lease – Revised Amendment

Report Date:	3 April 2024
Reporting Officer:	Strategic Projects Coordinator, Ross Oates
Responsible Manager:	Group Manager Assets & Infrastructure, James Kelly
Previous Reference:	Council Meeting held 18 March 2024 – CNC046/03/24

Report Purpose

For Council to consider a Deed of Variation to the current lease agreement for the Levi Adelaide Holiday Park (**the Park**).

Confidentiality Recommendation (Public)

Pursuant to section 90(2) and 90(3)(d)

Pursuant to section 90(2) of the *Local Government Act 1999* (the **Act**) the Council orders that all members of the public, except the Chief Executive Officer, Andrew MacDonald; Group Manager Assets & Infrastructure, James Kelly; Group Manager Finance, Muhammad Jawad; Group Manager Public Relations, Sarah Spencer; Team Leader, People, Governance & Risk, Jim Dickens; Governance Officer, Yazmin King and Governance Officer (EA), Emma Spencer be excluded from attendance at the meeting for Agenda Item 18.1. Levi Adelaide Holiday Park Lease – Revised Amendment.

The Council is satisfied that pursuant to section 90(3)(d) of the Act, the information to be received, discussed and considered in confidence as the information in relation to this agenda item includes information of a confidential nature (not being a trade secret) the disclosure of which -

(i) could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party; and
(ii) would, on balance, be contrary to the public interest.

The Council is satisfied, the principle that the meeting be conducted in a place open to the public, has been outweighed by the need to keep the information or discussion confidential.

Officer Recommendation (Confidential)

1. **That Council endorses the Deed of Variation provided at Attachment C to this report which amendments the existing lease agreement for the Levi Adelaide Holiday Park, whereby Clause 51 will not be invoked until 1 December 2052.**

2. **That Council authorises the Mayor and CEO to sign and seal the Deed of Variation as provided at Attached C to this report.**

RELEASED

Background

The Levi Adelaide Holiday Park is located at 1A Harris Road, Vale Park, and is comprised of an area of land totalling approximately 27,900m2 contained within Certificate of Title Volume 5874 Folio 181. Pursuant to Schedule 8 of the *Local Government Act 1999*, the Park operates as a Caravan and Camping ground all year round and on average caters to approximately 27,500 bookings each year.

On 13 November 2023, the lessee of the Levi Adelaide Holiday Park, Across Australia Parks & Resorts Pty Ltd (**Innoviv**), advised Administration of an issue relating to Clause 51 of the executed lease agreement, which relates to the potential redevelopment of Council-owned land. The wording of this clause was raised by the lessee's bank who deemed that the current lease is effectively only for six (6) months, resulting in them being unwilling to extend their loan funding, meaning the Lessee's loan would effectively be unsecured. The current lease agreement is provided in Attachment A.

At its Ordinary Council Meeting on 18 March 2024, Council considered a report recommending the removal of Clause 51 by means of a Deed of Variation, which was not supported by Council. As a result of this decision, Administration liaised with the lease holder to discuss alternatives which would support lessee need to secure bank funding to support continued investment into the Park.

It should be noted that the current lease agreement for the Park commenced on 1 December 2020 and is for a total of 42 years. This duration is broken up into four terms consisting of an initial term of twelve (12) years followed by three further terms of ten (10) years, each commencing on 1 December 2032, 1 December 2042 and 1 December 2052, respectively.

Discussion

Following Council's 18 March 2024 decision, Administration sought clarification from the lessee to determine the shortest possible term that would satisfy their loan requirements and allow them to continue to invest in the Park. The lessee advised that a term of around 30 years would be required and requested that Council consider amending the lease so that Clause 51 would not be invoked until the commencement of the final ten-year term which commences on 1 December 2052. This would give the lessee security for another 28 years.

Administration raised the lessee's request with Mellor Olsson Lawyers who advised that this would be a reasonable compromise given the existing lessee's circumstances. Mellor Olsson's email advice regarding this matter is provided in Attachment B.

A revised Deed of Variation which includes proposed changes to Clause 51 is provided in Attachment C, with the amended clause noted in Item 4.

Financial Implications

Clause 51 has a significant impact on the 'bankability' of the lease. It is for this reason that the Lessee has requested a change to Clause 51.

It should be noted that the Lessee is required to pay all cost associated with the proposed removal of Clause 51.

Risk Implications

Assuming Council has no intention of undertaking redevelopment that requires vacant possession, then removing Clause 51 until 1 December 2052 will have no impact/risk.

RELEASED

Attachments

Attachment A	Levi Adelaide Holiday Park Executed Lease Agreement
Attachment B	Email – Legal Advice from Mellor Olsson Lawyers
Attachment C	Levi Adelaide Holiday Park – Deed of Variation

Confidentiality Recommendation (Public)

Pursuant to section 91(7)

That having considered Agenda Item *18.1* Levi Adelaide Holiday Park Lease – Revised Amendment in confidence under section 90(2) & 90(3)(d) of the *Local Government Act 1999*, the Council, pursuant to section 91(7) of that Act orders that the report, minutes and all attachments to this Agenda Item be retained in confidence for a period of 12 months or until execution of a contract, and that pursuant to section 91(9)(c) of the *Local Government Act 1999* the Council delegates to the Chief Executive Officer the review and power to revoke this Order.

RELEASED

ATTACHMENT A

LEASE

PRIVACY COLLECTION STATEMENT: The information in this form is collected under statutory authority and is used for maintaining publicly searchable registers and indexes. It may also be used for authorised purposes in accordance with Government legislation and policy requirements.

LAND DESCRIPTION

That portion of the land comprised in Certificate of Title **Volume 5874 Folio 181** as delineated in red on the plan contained in "Annexure A" and otherwise known as portion of Levi Adelaide Holiday Park

ESTATE & INTEREST

In fee simple

LESSOR (Full name and address)

The Corporation of the Town of Walkerville ABN 49 190 949 882 of 66 Walkerville Terrace, Gilberton SA 5081

LESSEE (Full name, address and mode of holding)

Across Australia Parks & Resorts Pty Ltd ACN 621 588 421 and **Innoviv Pty Ltd** ACN 613 201 353 both of 69 Lansdowne Terrace, Vale Park SA 5081

TERM

TERM	TWELVE YEARS
COMMENCING ON	1 DECEMBER 2020
AND	
EXPIRING ON	30 NOVEMBER 2032

together with the rights of renewal, if any, set out in clause 5 of this Lease

RENT AND MANNER OF PAYMENT (or other consideration)

The commencing annual Rent is Four Hundred and Ninety Five Thousand Dollars ($495,000), exclusive of GST, and is subject to review at the times and in the manner set out in this Lease.

The Lessee must pay the Rent in equal monthly instalments in advance equal to 1/12th of the Rent, with the first instalment on the Commencement Date and thereafter on the first day of each subsequent month of the Term (adjusted proportionately for any period of less than one month).

IT IS COVENANTED BY AND BETWEEN THE LESSOR AND THE LESSEE as listed herein:

(Covenants, where not deposited, to be set forth on insert sheet(s) and securely attached)

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ATTACHMENT A

OPERATIVE CLAUSE

The Lessor LEASES TO THE LESSEE the land above ~~/ hereinafter~~ described and the LESSEE ACCEPTS THIS LEASE of the land for the term and at the rent stipulated, subject to the covenants and conditions expressed herein ~~/ in Memorandum No. _____~~and to the powers and covenants implied by the *Real Property Act 1886* (except to the extent that the same are modified or negatived below).

DEFINE THE LAND BEING LEASED INCORPORATING THE REQUIRED EASEMENT(S) ETC.

Not Applicable

CONSENTS OF MORTGAGEES AND SECTION 32 DEVELOPMENT ACT 1993 CERTIFICATION

This Lease does not contravene Section 32 of the Development Act 1993

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PART 1 - DEFINITIONS AND INTERPRETATIONS

1. **Definitions**

In this Lease, unless inconsistent with the context:

1.1 **Accounting Period** means a period of 12 months ending on 30 June in any year of the Term regardless of any part of the 12 month period falling outside the Term;

1.2 **Air Conditioning Plant** means all of the plant and equipment associated with ventilation, air conditioning, heating or cooling in or serving the Land;

1.3 **Authority** means any governmental, municipal, statutory or public department, office, agency or body having legal authority in relation to the Land or to the use or occupation of or a Service provided to the Land;

1.4 **Building** means any cabins, kitchens, reception, games room, amenity blocks and all other improvements erected on the Land including any modifications, extensions or alterations to those improvements and, if appropriate, includes the Premises and the Lessor's Plant;

1.5 **Business Day** means any week day except a public holiday in South Australia;

1.6 **Business Plan** means the plan prepared by the Lessee prior to the Commencement Date titled 'Levi Park Caravan Park Business Plan' (as was attached to the Lessee's expression of interest document and select tender submission provided to the Lessor on 30 June 2020 and having reference number "EOI202066783")and which induced the Lessor to grant this Lease to the Lessee, which details (amongst other things):

(a) marketing initiatives and business generation strategies;

(b) financial management;

(c) personnel management;

(d) capital improvement proposals;

(e) major maintenance requirements; and

(f) public and asset risk management;

for the Premises and the Lessee's Plant, and such updated business plan as is prepared by the Lessee and approved by the Lessor from time to time pursuant to the provisions of this Lease .

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1.7 **Claim** means any claim, demand, remedy, suit, injury, Cost, Loss, action, proceeding, right of action, claim for compensation and claim for abatement of rent obligation;

1.8 **Commencement Date** means the date specified in Item 6;

1.9 **Common Areas** means those parts of the Land designated by the Lessor, from time to time, to be used as common areas and includes car parking areas and driveways;

1.10 **Costs** means any cost, charge, expense, outgoing, payment or other expenditure of any nature (whether direct, indirect or consequential and whether accrued or paid) and, where appropriate, includes reasonable fees and disbursements payable to contractors, consultants and lawyers;

1.11 **CPI Review Date** means each date set out in Item 10(a), if any;

1.12 **Event of Default** means an event of default described in clause 41.1;

1.13 **Essential Term** means an essential term of this Lease described in clauses 40.1 and 40.2;

1.14 **Existing Rent** means the Rent payable under this Lease immediately before a given Review Date;

1.15 **Fair Wear and Tear** has its usual meaning except that:

(g) failure of or damage to a light globe or fluorescent tube; and

(h) soiling or wearing of an area of carpet or floor covering to an extent greater than that consistent with normal use of the Premises,

is not included as damage attributable to fair wear and tear;

1.16 **Fire Equipment** means all stop-cocks, hydrants, alarms, drench curtains, fire sprinkler systems, hoses, extinguishers, and other fire prevention equipment on or serving the Land;

1.17 **Fixed Review Date** means each date set out in Item 10(b), if any;

1.18 **Further Term** means the further term specified in Item 8, if any, and granted to the Lessee pursuant to clause 5.1;

1.19 **GST** has the meaning given to it in the GST Act;

1.20 **GST Act** means *A New Tax System (Goods and Services Tax) Act 1999*;

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1.21 **Land** means the land described in Item 4 and includes the Building and Common Areas;

1.22 **Lease** means this Memorandum of Lease including the attached schedule;

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

1.24 **Legislation** means any Act of Parliament (Federal or State), any Regulation under any Act, any by-law or order of an Authority;

1.25 **Lessee** means each person named in Item 2;

1.26 **Lessee's Covenants** means the covenants, agreements, and obligations contained or implied in this Lease or imposed by Legislation or law to be observed and performed by any person other than the Lessor;

1.27 **Lessee's Plant** means all fittings, furnishings, furniture, floor coverings, window treatments, partitions, counters, light and electrical fittings, cupboards, cabinets, plant, equipment, machinery, tools, signs, hoardings and any other chattels which are in or on the Premises during the Term but are not the property of the Lessor;

1.28 **Lessee's Proportion** means the proportion, expressed as a percentage, that the lettable area of the Premises bears to the lettable area of the Land as varied from time to time which, as at the Commencement Date is the percentage specified in Item 12;

1.29 **Lessor** means each person named in Item 1;

1.30 **Lessor Objectives** means those objectives detailed in Annexure B to this Lease.

1.31 **Lessor's Plant** means those improvements known as "Vale House", "the Gate House", "the Amenities Building" and "the Administration Building", and all fittings, furnishings, furniture, floor coverings, window treatments, partitions, counters, light and electrical fittings, cupboards, cabinets, plant, equipment, machinery, tools, signs, hoardings and any other chattels which are the property of the Lessor, or to which the Lessor has the right of possession, and which are situated on or about the Premises during the Term as detailed in Annexure C (as at the Commencement Date), which list will be updated by (or approved by) the Lessor from time to time;

1.32 **Lessor's Remedies** means the remedies available to the Lessor under clause 42.1(a);

1.33 **Locks** means all locks, keys to locks, latches or similar security devices in or about the Premises whether supplied or obtained by the Lessor or by the Lessee;

1.34 **Loss** means accident, loss, expense, damage injury or liability;

1.35 **Managing Agent** means any person appointed by the Lessor from time to time to manage the Land on the Lessor's behalf;

1.36 **Market Review Date** means each date set out in Item 10(c), if any;

1.37 **Money Payable** means the Rent, Outgoings and any other money payable by the Lessee under this Lease;

1.38 **Outgoings** means the total amounts paid or payable by the Lessor relating to an Accounting Period in connection with the ownership, management, operation and maintenance of the Land, whether or not by direct assessment, including the costs referred to in Item 19;

1.39 **Party** means the Lessor or the Lessee according to the context;

1.40 **Permitted Person** means:

(i) an agent, contractor, employee, licensee or invitee of the Lessee;

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(j) any person visiting the Premises with the express or implied consent of any person mentioned in paragraph (i); and

(k) any other person claiming through the Lessee;

1.41 **Permitted Use** means the use of the Premises described in Item 13;

1.42 **Premises** means that part of the land described in Item 5 and includes the Lessor's Plant;

1.43 **Property Institute** means the Australian Property Institute Incorporated South Australian Division;

1.44 **Proposed Lessee** means any person to whom the Lessee proposes to transfer or assign the Lessee's interest in this Lease;

1.45 **Rates and Taxes** means:

(a) if permitted by Legislation, land tax under the *Land Tax Act 1936 (SA)* calculated on a single holding basis;

(b) water, drainage and sewerage rates including meter rents, charges for the disposal of stormwater and water charges;

(c) emergency services levy;

(d) Save the River Murray Levy; and

(e) all other similar rates, taxes, charges, assessments or impositions except council rates and charges,

levied, charged, assessed or imposed from time to time in respect of any part of the Premises or the ownership or occupation of any part of the Premises but excluding any income or capital gains tax;

1.46 **Rent** means the annual rent specified in Item 9 as reviewed and varied from time to time under this Lease;

1.47 **Review Date** means the dates specified in Item 10;

1.48 **Rules** means the rules for managing the Land as notified from time to time by the Lessor to the Lessee;

1.49 **Services** means all gas, electricity, telephone, water, sewerage, Fire Equipment, ventilation, Air Conditioning Plant, hydraulic, elevator and security services and all other services or systems provided at or serving the Land or available for the Lessee's use;

1.50 **Special Conditions** means the special conditions, if any, detailed in Item 20;

1.51 **Term** means the term of this Lease as specified in Item 7, and includes any Further Term or period of holding over;

1.52 **Termination** means the expiry by effluxion of time or sooner determination of the Term;

1.53 **terms of this Lease** means the terms, covenants, conditions and warranties contained or implied in this Lease and any or each of them as the context may require;

1.54 **Unfit for Occupation** means that the Building or the Premises are so destroyed or damaged as to:

(a) render the Premises substantially unfit for occupation and use by the Lessee;

(b) make the Premises inaccessible; or

(c) interfere substantially with the Lessee's rights under this Lease to use the Premises exclusively; and

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1.55 **Valuer** means a valuer who:

(a) is a full member of the Property Institute of at least five years standing; and

(b) has had at least five years practical experience in South Australia in the valuation of:

A. commercial, retail and industrial properties; and

B. properties similar to the Premises.

2. Interpretation

2.1 Marginal Notes and Headings

Marginal notes and headings in this Lease must not be incorporated within the terms of this Lease and will not limit, affect or alter the interpretation of any of the terms of this Lease.

2.2 Construction

In the interpretation of this Lease, unless inconsistent with the context:

(a) words denoting the singular include the plural and vice versa;

(b) words denoting one gender include the other gender;

(c) the word "includes" or "including" is not a word of limitation;

(d) a reference to:

A. a clause, Part or Item means a reference to the relevant clause, Part or Item in this Lease;

B. a person includes a corporate body;

C. a Party includes the heirs, executors, administrators and permitted assigns and successors;

D. a professional body includes a successor to or substitute for that body;

E. month means a calendar month;

F. a statute includes a regulation, by-law, requisition or order made under that statute and any amendment or replacement from time to time in force; and

G. a breach of the Lessee's Covenants includes each and any breach, default, neglect or omission affected by or on behalf of the Lessee or by a Permitted Person;

(e) a covenant by the Lessee not to do or omit to do any act or thing includes a covenant:

A. not to suffer that act or thing to be done or omitted to be done by a Permitted Person; and

B. to do everything necessary to ensure that that act or thing is not done or omitted to be done; and

(f) any term of this Lease which imposes an obligation on the Lessee to pay money for any purpose, incorporates wherever it is possible in the context, an obligation to promptly:

A. discharge any relevant liability to pay money if that liability was incurred in respect of the Premises;

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B. reimburse the relevant amount of money to the Lessor if the Lessor pays an amount which should be paid by the Lessee; and

C. indemnify and keep indemnified the Lessor from and against any liability to pay the relevant amount of money.

2.3 Special Conditions

(a) The Special Conditions bind the Parties.

(b) If there is any inconsistency between the terms of this Lease and a Special Condition, the Special Condition prevails to the extent of that inconsistency.

2.4 Severance

If any term of this Lease is or becomes void or unenforceable at law or in equity by reason of any illegality, ambiguity or otherwise then, so far as may reasonably be possible, that term of this Lease is severed from this Lease and this Lease will otherwise continue in full force and effect.

2.5 Joint and Several Liability

If a Party comprises two or more persons, the covenants and agreements on their part bind and must be observed and performed by them jointly and each of them severally and may be enforced against any one or any two or more of them.

2.6 Area and Measurement

Where any area of the Premises or the Building is to be calculated or measured for the purposes of this Lease, those calculations and measurements will be in accordance with:

(a) the relevant method for the measurement of buildings utilised by the Property Council of Australia's Method of Measurement for Lettable Area; or

(b) if there is no relevant method, the method or criteria which the Lessor selects as most appropriate.

2.7 Leases Act

As at the Commencement Date, the Leases Act applies to this Lease unless Item 17 contains the words "Not Applicable".

PART 2 - GRANT AND TERM

3. Grant

3.1 Agreement

The Lessor leases the Premises to the Lessee subject to:

(a) the payment of the Rent and other Money Payable; and

(b) the observance and performance of the Lessee's Covenants,

for the Term commencing on the Commencement Date and ending on the day of Termination.

4. Holding Over

4.1 Monthly Tenant

If the Lessee continues in possession of the Premises after Termination with the Lessor's consent then the Lessee does so as a monthly tenant.

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4.2 Terms

Subject to clauses 4.3 and 4.4, the relevant terms of this Lease apply to that monthly tenancy.

4.3 Monthly Rent

The Lessee must pay to the Lessor a monthly Rent equal to 1/12th of the Rent payable by the Lessee immediately prior to Termination, increased by 5%.

4.4 Termination

(a) The Lessor or the Lessee may terminate the monthly tenancy on any day by giving at least one month's notice to the other.

(b) If the Lessee defaults in the performance of its obligations under the monthly tenancy, the Lessor may terminate the monthly tenancy by giving 24 hours' notice to the Lessee.

5. Right of Renewal

5.1 Further Term

If the Lessee wishes to renew this Lease for the Further Term and the Lessee:

(a) is not in breach of any of the Lessee's Covenants; and

(b) serves the Lessor with notice that it wishes to renew this Lease not less than three months and not more than six months prior to the expiration of the then current Term,

then the Lessee may renew this Lease for the Further Term on the terms of this clause 5.

5.2 Exercise

(a) If this right of renewal is lawfully exercised, the Lessee holds the Premises subject to the terms of this Lease and for the Rent determined in accordance with Part 3.

(b) The right of renewal contained in this clause may be exercised on the number of occasions, if any, specified in Item 8.

5.3 Renewal Documents

The Lessor will prepare and the Lessee must promptly execute and return to the Lessor an extension of this Lease on terms consistent with this clause and otherwise on such terms as the Lessor may reasonably require.

PART 3 - RENT AND RENT REVIEW

6. Rent

6.1 Payment of Rent

The Lessee must pay the Rent to the Lessor by equal monthly instalments in advance.

6.2 Instalments

The Lessee must pay:

(a) the first instalment on the Commencement Date; and

(b) thereafter an instalment on the first day of each subsequent month of the Term.

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7. CPI Review

7.1 Formula

The Rent will vary on each CPI Review Date to a rent determined by the following formula:

$$\text{Rent} = \frac{\text{CPI 2}}{\text{CPI 1}} \times \text{Existing Rent}$$

Where:

(a) **CPI 1** means the Consumer Price Index (All Groups) for the City of Adelaide for the quarter ending immediately before the immediately preceding Review Date; and

(b) **CPI 2** means the Consumer Price Index (All Groups) for the City of Adelaide for the quarter ending immediately before the relevant CPI Review Date.

7.2 Change in Index

(a) If there is a change or alteration in the basis or method of calculation of the Consumer Price Index (All Groups) at any relevant time then:

A. the Lessor and Lessee must agree on such alterations as may reasonably be required to preserve the intended continuity of the calculation; and

B. if the Lessee and the Lessor do not agree on any required alteration, then, at the request of either the Lessor or the Lessee, the President for the time being of the Institute of Chartered Accountants in Australia, South Australian Branch, may nominate a chartered accountant whom the Lessor and the Lessee must appoint to determine that dispute and the amount of the said index at any time or from time to time.

(b) The chartered accountant appointed in accordance with this clause will be deemed to be acting as an expert and not as an arbitrator, and the decision will be final and binding on the Lessor and the Lessee.

(c) The chartered accountant's Costs must be paid by the Lessor and the Lessee in equal shares.

8. Fixed Review

8.1 Formula

The Rent will vary on each Fixed Review Date to a rent determined by increasing the Existing Rent by the percentage specified in Item 11.

9. Market Review

9.1 Formula

The Rent will vary on each Market Review Date to a rent determined in accordance with this clause 9.

9.2 Agreement on Market Rent

(a) The Lessor may at any time serve a notice on the Lessee (**Lessor's Notice**) which states the Lessor's assessment of the Rent to apply from the Market Review Date.

(b) The Rent from and including the Market Review Date is the amount stated in the Lessor's notice under clause 9.2 unless the Lessee serves a notice on the Lessor disputing that amount (**Lessee's Notice**) within 10 Business Days after the Lessor serves the Lessor's Notice.

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(c) If the Lessee does serve a notice in accordance with clause 9.2(b), the Lessor and the Lessee must attempt to resolve their dispute about the Rent payable from the Market Review Date within 10 Business Days of service of the Lessee's Notice.

9.3 Appointment of Valuer

(a) If the Lessor and the Lessee do not agree on the Rent payable from the Market Review Date within 20 Business Days after the Lessee serves the Lessee's Notice, then the Rent will be determined by a Valuer:

A. appointed by the Lessee and the Lessor;

B. who will be deemed to be acting as an expert and not as an arbitrator; and

C. whose decision will be final and binding on the Lessor and the Lessee.

(b) In default of agreement as to the appointment of a Valuer, then at the request of either the Lessor or the Lessee, the President for the time being of the Property Institute may nominate a Valuer whom the Lessor and the Lessee must appoint for the purposes of this clause.

(c) The Lessor and the Lessee may make written submissions to the Valuer within 14 days after the Valuer is appointed.

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

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

(f) The Valuer must make the determination in writing within 60 days after appointment, giving detailed reasons and specifying the matters required to be taken into account under this lease. The determination is final and binding.

(g) If the Valuer's determination is more than the Lessor's assessment of the Market Rent, the Lessee must pay all the costs of the valuation. In all other cases, the costs of the valuation must be shared equally between the Lessor and Lessee..

9.4 Valuation

In determining the current market rent of the Premises, the Valuer:

(a) may take into account any matters considered relevant, including any written submissions from the Lessor or the Lessee;

(b) must assume that:

A. the Lessor is a willing but not anxious landlord;

B. the Lessee is a willing but not anxious tenant;

C. the Lessee has observed all the Lessee's Covenants as at the Market Review Date;

D. the Premises are vacant but fit for immediate occupation; and

E. the Premises are offered with the Permitted Use;

(c) must take into consideration:

A. the terms of this Lease;

B. current rents payable for other premises of a quality, nature, size and location similar to the Premises;

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C. the goodwill, if any, attributable to the location and other physical characteristics of the Premises;

D. the value of the Lessor's Plant and the value of any fitout or other tenancy works provided by the Lessor; and

E. the balance of the Term, including any Further Term, available to the Lessee; and

(d) must not take into account:

A. the value of the personal goodwill, if any, created by the Lessee's occupation of the Premises;

B. any value attributable to the Premises as a consequence of the Lessee's Plant;

C. any state of disrepair of the Premises if that condition resulted from any works carried out or not carried out on the Premises by the Lessee or from the Lessee's breach of any of the Lessee's Covenants; and

D. any incentive or inducement that is given, or has been offered, to:

i. the Lessee in respect of the Premises; or

ii. to tenants, or prospective tenants, in respect of adjacent, nearby or similar premises.

9.5 Written Report

The Valuer must give to the Lessor and the Lessee a written report within 20 Business Days of the Valuer's appointment containing:

(a) detailed reasons for the determination; and

(b) the matters taken into account in making the determination of Rent.

10. **Payment of Rent Pending Review**

10.1 Existing Rent until Review

(a) Until the Rent is reviewed and determined in accordance with this Part, the Lessee must continue to pay the Existing Rent.

(b) Once the Rent is determined, the Lessor and the Lessee must make an appropriate adjustment between themselves to reflect any difference between the Existing Rent and the Rent determined for the period between the relevant Review Date and the date on which the Rent is determined.

10.2 No Estoppel

(a) The Lessor may initiate a review of the Rent under this Part at any time after the relevant Review Date.

(b) A failure by the Lessor to initiate a review and determination of the Rent prior to the relevant Review Date will not create an estoppel against the Lessor.

RELEASED

PART 4 - OUTGOINGS AND OTHER EXPENSES

11. Outgoings

11.1 Actual Statement

(a) The Lessor must determine the Outgoings payable by the Lessee in respect of each Accounting Period.

(b) As soon as possible after the expiration of each Accounting Period, the Lessor must provide an itemised statement to the Lessee containing particulars of the actual Outgoings payable by the Lessee.

(c) The statement is conclusive unless either the Lessor or the Lessee notifies the other of a manifest error within 20 Business Days of its service.

11.2 Payment of Actual Outgoings

The Lessee must pay the Lessee's Proportion of the Outgoings within 10 Business Days after the service of the statement referred to in clause 11.1(b).

11.3 Payment of Outgoings by Instalments

(a) Notwithstanding clauses 11.1 and 11.2, the Lessor may notify the Lessee of the Lessor's estimate of the Outgoings payable by the Lessee for any period not exceeding one year in advance of the estimate.

(b) During this period, the Lessee must pay the Lessor on each occasion that an instalment of the Rent is payable by the Lessee to the Lessor, 1/12th of the Lessee's Proportion of the Outgoings estimate.

(c) As soon as may be convenient after each Accounting Period, the Lessor will provide to the Lessee an audited statement of the actual Outgoings for the Accounting Period then ended as compared to the Outgoings estimate.

11.4 Final Adjustment of Outgoings

If the total amounts paid by the Lessee pursuant to clause 11.3(b) in respect of an Accounting Period are:

(a) less than the actual amount of the Lessee's Proportion of the Outgoings payable by the Lessee for that Accounting Period, the Lessee must pay the difference within 14 days of the Lessor furnishing an audited statement to the Lessee in accordance with clause 11.3(c); or

(b) greater than the actual amount of the Lessee's Proportion of the Outgoings payable by the Lessee for that Accounting Period, the Lessor will credit the difference to the Lessee's account.

11.5 Leases Act

If the Leases Act applies, the Lessor will comply with its obligations regarding the provisions of information to the Lessee and the reconciliation of the estimated and actual Outgoings.

RELEASED

11.6 Change to Lessee's Proportion

If during the Term, there is a change for any reason in either the total lettable area of the Land or the Premises, the Lessor may nominate a revised percentage for the purposes of Item 12 and from the date of that change that percentage will be the Lessee's Proportion and the Lessee must pay that percentage of any Outgoings which arise in respect of the Land.

12. Other Expenses

12.1 Rates and Taxes

The Lessee must pay all Rates and Taxes separately or directly levied, charged, assessed or imposed in respect of the Premises, its occupation by the Lessee and the Lessee's Plant to the extent that it is not included as Outgoings.

12.2 Direct Expenses

(a) The Lessee must pay for all charges, fees and expenses for all Services which are supplied by any person, including the Lessor, in respect of the Premises or in relation to any business of the Lessee or any activity in or occupation of the Premises by the Lessee to the extent that it is not included as Outgoings.

(b) The Lessor may install in or about the Premises any meters necessary for measuring the Services at the Lessee's Cost.

(c) If no meters are installed, a statement in writing given by the Lessor as to any amount payable by the Lessee pursuant to this clause is prima facie evidence of the matters so stated.

13. Electricity

13.1 Definitions

In this clause 13:

Distribution Network Charges means any fees, charges or expenses which the Lessor is required to pay to the operator of any electricity distribution network to enable the delivery of electricity to the Land;

Electricity Regulations means any Legislation governing the distribution, retailing, reselling or supply of electricity;

Retailer means an electricity retailer licensed under the Electricity Regulations; and

Supply End Date means, subject to clause 13.3(a) the last day of supply of electricity to the Premises by the Lessor.

13.2 Lessor Supply

(a) If at any time during the Term the Lessor supplies electricity to the Premises then:

A. the Lessee must pay the Lessor's charges for that electricity, subject to the Electricity Regulations; and

B. the Lessor will not be liable to the Lessee for any interruption of the electricity supply to the Premises unless the interruption is caused by the negligence of the Lessor.

(b) The Lessor is not obliged to sell or supply electricity to the Lessee or the Premises.

RELEASED

13.3 Termination of Lessor Supply

(a) Either the Lessor or the Lessee may at any time during the Term terminate the supply of electricity to the Premises by the Lessor on providing 40 Business Days' notice to the other.

(b) The Lessee must, on or before the Supply End Date, purchase electricity from Retailer of its choice in accordance with clause 13.4.

13.4 Lessee's Own Supply

If at any time during the Term:

(a) the Lessor does not supply electricity to the Premises; or

(b) subject to compliance with clause 13.3, the Lessee elects to purchase electricity from a Retailer,

the Lessee must:

(c) enter into a contract to purchase electricity for the Premises from a Retailer and:

A. ensure that the contract includes a condition which requires the Retailer to disclose information to the Lessor concerning the Lessee's consumption of electricity at the Premises and such other information to enable the Lessor to calculate the Lessee's share of the Distribution Network Charges; and

B. provide a copy of the contract to the Lessor by no later than the Supply End Date;

(d) at its Cost, arrange for the installation of any meters or other equipment necessary for the purpose of consuming electricity purchased from the Retailer; and

(e) provides on request any other information which is reasonably required by the Lessor.

13.5 Inset Network and Distribution Network Charges

(a) If necessary, the Lessor will allow the Lessee to have access to and use the Lessor's insert network.

(b) If the Lessee is supplied electricity via an inset network, and the Lessor is charged Distribution Network Charges in respect of the supply of electricity to the Premises, the Lessee must pay to the Lessor a fair proportion of any Distribution Network Charges, which proportion will be calculated by reference to the ratio that the amount of electricity consumed at the Premises bears to the amount of all of the electricity consumed on the Land.

13.6 Increase Rent

If, at the Commencement Date, the Lessee purchased electricity from the Lessor and then subsequently exercised its right to purchase electricity from a Retailer, the Lessor may, on giving notice to the Lessee, increase the Rent payable for the remainder of the Term by a reasonable amount to take into account the Costs incurred by the Lessor as a result of the Lessee's election (including, if applicable, any loss of margin on the sale of electricity and any additional administrative costs).

14. Costs

14.1 Payable

Subject to clause 14.2, the Lessee must pay the Lessor's reasonable costs incurred in connection with:

RELEASED

(a) attending to registration of the Lease, including preparation of a survey plan, if necessary;

(b) all stamp duty and registration fees incurred in connection with this Lease or any dealings with this Lease, including any fines and penalties payable as a consequence of any neglect or default of the Lessee;

(c) any consent required under this Lease, including any mortgagee or encumbrancee of the Premises;

(d) any assignment, subletting or dealing with this Lease;

(e) the exercise of any right of renewal under this Lease; and

(f) all legal and other costs incurred by the Lessor in consequence of any actual or threatened breach by the Lessee under this lease or in exercising or enforcing (or attempting to do so) any rights or remedies of the Lessor hereunder or at law or otherwise arising in consequence of any actual or threatened breach by the Lessee.

14.2 Excluded by Leases Act

If the Leases Act applies to this Lease, the Lessee is not obliged to pay any amount under clause 14.1 which the Leases Act excludes the Lessor from recovering.

15. Money Payable

15.1 Terms

The Lessee must pay all Moneys Payable to the Lessor under this Lease:

(a) on or before the time the payment is due or, if this Lease does not specify a particular time for payment, within five Business Days of demand;

(b) without set-off, counter-claim, withholding or deduction;

(c) to the Lessor or as the Lessor directs; and

(d) in the manner the Lessor may notify to the Lessee from time to time.

15.2 Apportionment

If necessary, the Lessor and the Lessee must apportion any payment of Moneys Payable relating to:

(a) a period of less than one complete month; or

(b) a period that is not within the Term (or any other occupation of the Premises by the Lessee),

on a daily basis.

15.3 Debt or Rent

All Moneys Payable by the Lessee to the Lessor under this Lease which are due and unpaid are recoverable as a debt or as rent in arrears.

16. Interest on Arrears

16.1 Interest Payable

If the Lessee does not pay any Money Payable to the Lessor under this Lease on time, the Lessee must pay late fees to the Lessor on the outstanding amount:

RELEASED

(a) at the rate of 2% per annum above the overdraft interest rate charged by the Lessor's usual banker at the due date for payment on a balance of over $100,000.00; and

(b) from the date the payment was due until the date the payment is made in full.

17. Goods and Services Tax

17.1 Definitions

In this clause 17:

GST Increase Date means the date on and from any Legislation increase in the rate of GST;

GST Rate means in relation to a Supply under this Lease, the rate at which the GST is imposed on the Supply;

Supply means taxable supplies and taxable importations within the meaning of the GST Act; and

Tax Invoice has the same meaning as that term has in the GST Act.

17.2 Exclusive of GST

Unless otherwise stated, all amounts payable under this Lease are exclusive of GST.

17.3 Increased Amount

(a) If GST is imposed on any Supply under this Lease:

A. any amount payable to the Lessor by the Lessee in respect of the Supply is increased by the product of the GST Rate and that amount; and

B. subject to clause 17.4, the Lessee must pay the increased amount to the Lessor for the Supply at the same time and in the same manner as the amount payable is otherwise payable.

(b) If GST is imposed on any Supply under this Lease and the GST Rate subsequently increases:

A. with effect from each GST Increase Date, any amount payable to the Lessor by the Lessee in respect of the Supply is increased by the product of the increase in the GST Rate and that amount; and

B. subject to clause 17.4, the Lessee must pay the increased amount to the Lessor for the Supply at the same time and in the same manner as the amount payable is otherwise payable.

17.4 Tax Invoice

Any increases in the amounts payable to the Lessor by the Lessee pursuant to clause 17.3 are not payable by the Lessee until the Lessor provides to the Lessee a Tax Invoice.

PART 5 - USE OF PREMISES

18. Use

18.1 Permitted Use

Unless the Lessor consents to any other use, the Premises must be used only for the Permitted Use.

RELEASED

18.2 Excluded Use

Unless the Lessor consents, the Lessee must not allow the sale from the Premises of any product or the provision from the Premises of any service specified in Item 14.

18.3 Damages

The Lessee acknowledges that the Lessor may incur Loss if the Lessee either:

(a) uses the Premises for any purpose other than the Permitted Use; or

(b) sells from the Premises a product or provides from the Premises a service specified in Item 14.

19. Warranties as to Use

19.1 No Warranty

The Lessor does not give and the Lessee acknowledges that the Lessee does not rely on:

(a) any warranty, representation or undertaking as to the fitness, quality, condition or suitability of the Premises for the Permitted Use or any other purpose;

(b) any warranty as to the use to which the Premises may be put; or

(c) any warranty that for the duration of the Term, the Premises will be structurally suitable for the type of business which the Lessee intends to carry on.

20. Act and Regulations

20.1 Prohibited by Legislation

The Lessee accepts this Lease subject to any prohibitions or restrictions on the use of the Premises under any Legislation.

20.2 Compliance

(a) The Lessee must ensure compliance with the provisions of all Legislation which relate to the Premises, the Lessee's Plant and the Lessee's use and occupation of the Premises.

(b) The Lessee must promptly give to the Lessor after its receipt, any notice issued under any Legislation or by any other person relating to the Premises, the Lessee's Plant and the Lessee's use and occupation of the Premises.

20.3 Licences

The Lessee must keep all licences, approvals, certificates and permits required to use the Premises for the Permitted Use in force during the Term.

20.4 Environmental Initiatives

The Lessee must comply with any direction of the Lessor that relates to any environmental initiative or measure the Lessor introduces in respect of the Land, including in order for the Lessor to comply with any agreement, undertaking or initiative, or to achieve any particular energy or other rating, under the National Australian Built Environment Ratings System or any similar scheme, initiative or program.

RELEASED

21. Conduct of Business

21.1 Manner

The Lessee must conduct or cause to be conducted the Lessee's business and all activities of the Lessee associated with the Premises, in a reasonable and businesslike manner and with all due care and consideration for the public.

21.2 Quality

All of the Lessee's Plant must be of good quality and appearance and in harmony with the Premises and the Lessor's Plant.

21.3 Maintain possession

Unless the Lessor first consents, the Lessee must maintain possession of the Premises during the Term and must not allow the Premises, or a substantial part, to be vacant or unattended for any period exceeding five consecutive Business Days.

22. Trading Hours

22.1 Lessee's Hours

Subject to clause 20.2(a), the Lessee may keep the Premises open and accessible to the public during such times as the Lessee may determine from time to time.

23. Prohibitions

23.1 General

The Lessee must not:

(a) allow any noxious, noisome or offensive art, trade, business, occupation or calling to be carried on or in the Premises;

(b) allow any act or thing on the Premises which becomes an annoyance, nuisance, grievance, damage or disturbance to any occupier or owner of any adjoining premises or land;

(c) permit any use of the Premises which may cause any damage to the Premises, whether structural or otherwise, excepting Fair Wear and Tear;

(d) do anything to overload or interfere with the Building's facilities or Services or use them for anything other than their intended purpose;

(e) hold or permit any auction in the Premises; and

(f) do anything to pollute the Premises or its environment.

23.2 Heavy Equipment and Noxious Substances

Unless the Lessor first consents, the Lessee must not allow to be brought on to the Premises:

(a) any heavy, large or cumbersome machinery, plant, equipment or other items of any weight, nature or size that may cause any damage to the Land, whether structural or otherwise; or

(b) any dangerous, noxious, toxic, volatile, explosive or inflammable substance or compound whether in solid, liquid or gas form, except that one LPG gas bottle for each caravan site will be allowed to the extent it is commonly associated with the Permitted Use.

RELEASED

23.3 Lessor's Plant - No Damage

Unless the Lessor first consents, the Lessee must not alter, modify, deface, damage or move from or about the Land any of the Lessor's Plant.

23.4 Attachment and Removal of Plant

(a) Unless the Lessor first consents, the Lessee must not:

A. attach the Lessee's Plant to the Premises in any manner; or

B. remove from the Premises any part of either the Lessor's Plant or the Lessee's Plant that is attached to the Premises at any time.

(b) If the Lessor consents to the Lessee attaching or removing any part of either the Lessor's Plant or the Lessee's Plant then the Lessee must immediately cause to be made good in a professional manner any damage to the Land caused by the attachment or removal.

24. Services

24.1 Air Conditioning Plant

The Lessee must not use or install any heating or cooling device or machine which in the Lessor's opinion interferes with the efficient running of the Air Conditioning Plant or increase its running costs.

24.2 Separate Air Conditioning

If the Premises are serviced by a separate air conditioning unit, the Lessee must:

(a) pay when due all Costs associated with running, using, maintaining, servicing, repairing, conducting preventative maintenance and powering that air conditioning unit; and

(b) for the duration of the Term, enter and keep current:

A. an agreement with a competent contractor for the inspection, service and maintenance of the air conditioning unit; and

B. an insurance policy,

each with a party and on terms consented to by the Lessor.

24.3 Fire Protection

The Lessee must:

(a) take all reasonable precautions against fire in the Premises;

(b) treat Fire Equipment with care;

(c) comply with all relevant fire standards or codes applicable to the Premises and the Permitted Use as may be required by Legislation; and

(d) pay all Costs associated with the maintenance and repair of the Fire Equipment exclusively serving the Premises.

24.4 Telephones

(a) The Lessee must first obtain the Lessor's consent before the Lessee attaches to or removes from the Premises any telephonic or telegraphic equipment.

(b) The Lessee must not cancel or allow to lapse any telephonic or telegraphic rental equipment on the Premises.

RELEASED

(c) If requested by the Lessor, on Termination, the Lessee must assign to the Lessor or the Lessor's nominee, any subscription, lease or rental agreement of any telephonic or telegraphic equipment on the Premises.

25. Signs and Other Devices

25.1 Consent for Signs

(a) The Lessee must first obtain the Lessor's consent before it paints, attaches, erects, places or displays any sign, hoarding, display or advertisement on the Premises.

(b) Subject to Part 8, the Lessor will consent to any reasonable request of the Lessee pursuant to this clause if the sign, hoarding, display or advertisement which the Lessee seeks to paint, attach, erect, place or display on the Premises:

A. is of good quality and condition;

B. is in harmony with the appearance and construction of the Premises; and

C. is not in breach of any Legislation or the requirements of an Authority.

25.2 Removal of Signs

On Termination, the Lessee must:

(a) remove all signs, hoardings, displays or advertisements that have been painted, attached, erected, placed or displayed on the Premises during the Term; and

(b) cause to be repaired and made good in a proper and tradesmanlike manner any damage to the Premises arising from the removal of any sign, hoarding, display or advertisement.

25.3 Other Devices

The Lessee must first obtain the Lessor's consent before it:

(a) attaches, erects or places any aerial or antennae or any loudspeaker, film screens or similar devices on the Premises; or

(b) uses any radio, television or other like media equipment which may be heard or seen from outside the Premises.

26. Security and Locks

26.1 Security

The Lessee must:

(a) use its best endeavours to protect the Premises and any property located within the Premises from theft or vandalism; and

(b) secure the Land including locking each door and window when the Premises are not in use.

26.2 Locks

(a) All Locks which are fitted to the Premises from time to time are the sole property of the Lessor.

(b) In consideration of the Lessor granting this Lease the Lessee agrees to assign to the Lessor any Locks which are obtained by the Lessee during the Term.

(c) The Lessee must first obtain the Lessor's consent before the Lessee changes, alters, removes or fits any Lock on the Premises, or cuts, makes, obtains, or parts with possession of any key to any Lock.

RELEASED

(d) If reasonably requested by the Lessor, the Lessee must replace any existing Locks which are fitted to the Premises with Locks of a type and nature approved by the Lessor.

PART 6 - MAINTENANCE, REPAIRS AND CLEANING

27. Duties

27.1 Conditions on Commencement

The Lessee acknowledges that the Premises were in good and substantial repair on the Commencement Date.

27.2 Lessee's General Duty

(a) The Lessee must promptly and regularly cause to be done in a proper workmanlike manner whatever cleaning, maintenance, repair, replacement, painting and refurbishment may be necessary from time to time to keep the Premises (including the Lessor's Plant) in clean and in good and substantial repair and working order throughout the Term.

(b) The Lessee may engage any competent and efficient cleaner for the purposes of this clause 27.2.

27.3 Lessee's General Duty - Exclusions

Subject to clause 27.4, the Lessee will not be liable:

(a) to repair, replace or amend any damage to the Premises caused by:

A. Fair Wear and Tear; or

B. damage covered by insurances taken out by the Lessor in respect of the Premises; or

(b) for structural repair.

27.4 Lessee's General Duty - Inclusions

The Lessee will be responsible:

(a) to repair, replace or amend any damage to the Premises where:

A. the damage arises from a breach of the Lessee's Covenants or any other omission, neglect or default of the Lessee; or

B. any money from an insurance policy is irrecoverable because of a breach of the Lessee's Covenants; and

(b) for structural repair if that repair or replacement is made necessary by either:

A. a breach of the Lessee's Covenants or any other omission, neglect or default of the Lessee; or

B. the Lessee's use of the Premises or the nature of its business.

27.5 Lessee's Specific duties

The Lessee must:

(a) keep the Lessee's Plant clean and maintained in good order and condition;

(b) keep the Premises clean, tidy and free from all rubbish, dirt, pests (including white ants), animals (except guide dogs for the blind or deaf) and vermin;

RELEASED

(c) not allow the Premises to be in an unsanitary or unhygienic condition, whether within the meaning of any Legislation or otherwise;

(d) remove all graffiti, posters, drawings and paintings placed or applied to any part of the Premises including exterior doors, windows or walls of the Premises;

(e) promptly repair or replace:

A. broken glass; and

B. damaged or broken light globes, fluorescent tubes and electrical equipment;

(f) store all rubbish and waste materials in proper receptacles and arrange for the regular removal of all waste materials from the Premises;

(g) maintain in good working order all drains, sewers, sinks, gutters, downpipes, plumbing, water pipes, gas pipes, cisterns, toilets, basins, taps and all related fittings in the Premises and keep them clear of any blockage and accumulation of waste; and

(h) cause all cigarette butts, ashes, cigarette packages, matches and other associated litter emanating from the smoking of cigarettes, cigars or pipes smoked by the Lessee or any Permitted Person to be placed in proper receptacles.

28. Notice to Repair

28.1 Notice

The Lessor may give notice to the Lessee to repair any defect or to do any work which the Lessee is obliged to do if there is during the Term any of the following:

(a) any defect in the Premises;

(b) any want of repair in the Premises; or

(c) any other work to be done by the Lessee in respect of either the Premises or the Lessor's Plant and that work is not done in a satisfactory manner.

28.2 Immediate Action

If the Lessor gives a notice pursuant to this clause, the Lessee must immediately repair the defect or want of repair or do whatever work is required.

28.3 Right of Lessor to Remedy

If the Lessee fails to complete any works referred to in clause 28.1 within such time as the Lessor may reasonably specify then:

(a) the Lessor may either personally or by any servant, agent or contractor repair the defect by whatever means the Lessor may deem fit; and

(b) the Lessee must pay all reasonable Costs incurred by the Lessor in respect of such works.

29. Notice of Defects

29.1 Prompt Notice

The Lessee must promptly notify the Lessor of any defect, damage or want or repair to the Land, including the Premises of which the Lessee is aware or reasonably should have been aware or which may cause any danger or hazard to the Land or any person on the Land.

RELEASED

PART 7 - REDECORATION

30. Paint and Decorate

30.1 Intervals

The Lessee must paint and decorate the Premises at each of the following times:

(a) not less than one month nor more than three months prior to the expiration of the periods, if any, specified in Item 15;

(b) immediately upon the lawful Termination of the Lease by the Lessor pursuant to the Lessor's Remedies; and

(c) not less than one month nor more than three months prior to the expiration of the Term.

30.2 Obligations

The obligation to paint and decorate the Premises pursuant to this clause 30 includes an obligation to:

(a) clean and prepare all surfaces to be decorated;

(b) treat as previously treated all interior and exterior surfaces of the Premises; and

(c) restore and repair (if reasonably required) the Lessor's Plant.

30.3 Requirements

The painting and decoration required by this clause must be done:

(a) with good quality materials first consented to by the Lessor in relation to the quality and colour of the materials; and

(b) by the Lessee or an agent of the Lessee consented to by the Lessor promptly, in a proper and workmanlike manner and at the Lessee's Cost.

30.4 Failure to Decorate

If the Lessee fails to paint and decorate in accordance with this clause 30, the Lessor may do so at the Lessee's Cost.

PART 8 - ALTERATIONS TO THE PREMISES BY THE LESSEE

31. Alterations by Lessee

31.1 Consent

A. The Lessee must first obtain the Lessor's consent if it wants to make any necessary or desirable alterations (including an addition, modification or improvement) to the Premises.

B. The Lessee must provide full details of the proposed alterations and additions to the Lessor.

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

RELEASED

31.2 Requirements

Any alterations carried out by the Lessee must be carried out:

(a) promptly;

(b) in a proper and professional manner;

(c) in accordance with:

A. the approved plans, drawings and specifications;

B. any relevant consents and approvals, and conditions imposed by the Lessor in its capacity as lessor under this Lease; and

C. the reasonable requirements and directions of the Lessor or the Lessor's architect and any Authority; and

(d) if required by the Lessor:

A. by experienced contractors and tradesmen consented to by the Lessor; and

B. under the supervision of a person nominated by the Lessor.

31.3 Costs

The Lessee is responsible for all Costs of undertaking the alteration, including all Costs incurred by the Lessor of and incidental to the alteration (including the Lessor's architect and supervisor's fees).

31.4 Lien

The Lessee must not cause or allow any lien or charge to be made in respect of any claim for costs arising out of the alteration.

31.5 Reinstatement

(a) If the Lessee fails to comply with this clause 31, the Lessor may give the Lessee a notice requiring it to reinstate the Premises to their former condition.

(b) If the Lessee fails to comply with the notice under clause 31.5, the Lessor may undertake the necessary work and the Lessee will be responsible for all the Lessor's costs of doing the work.

31.6 Alterations May Remain in Premises after Term

If the Lessor and the Lessee agree in writing that any alterations effected during the Term by the Lessee will remain in the Premises after Termination, then after Termination all such alterations become the sole property of the Lessor.

31.7 Mandatory Alterations

If due to the Permitted Use and by reason of the operation of any Legislation, the Premises must be altered in any way (including the provision of any amenities such as toilets or washrooms for customers or staff of the Lessee) then, subject to the other clauses in this Part, the Lessee must, at its Cost, promptly effect such alterations as are necessary to comply with such Legislation.

RELEASED

PART 9 - DAMAGE TO PREMISES

32. Unfit for Occupation

32.1 Notice

If the Premises are Unfit for Occupation, the Lessor may within two months after the Premises becoming Unfit for Occupation give notice to the Lessee that:

(a) it considers the damage is such as to make its repair impracticable or undesirable; or

(b) it intends to reinstate the damage and provide a reasonable estimate on how long that reinstatement is estimated to take.

32.2 No Obligation

The Lessor is not obliged at any time to:

(a) reinstate any structural damage or deterioration to the Premises; or

(b) reinstate the Premises if the Premises are at any time Unfit for Occupation.

32.3 Termination

(a) If the Lessor gives notice under clause 32.1(a), either the Lessor or the Lessee may terminate this Lease without compensation by giving no less than five Business Days' notice to the other.

(b) If the Lessor fails to:

A. give the Lessee a notice under clause 32.1(b); or

B. reinstate the damage within a reasonable period of time, being no less than the time estimated by the Lessor in a notice given under clause 32.1(b), following the Lessee's request to do so,

then the Lessee may terminate this Lease without compensation by giving not less than five Business Days' notice to the Lessor, unless the reinstatement is substantially completed within that five Business Day period.

32.4 Abatement of Rent

If the Premises are Unfit for Occupation, the Rent and Outgoings, or a fair and just proportion of them according to the nature and extent of the damage sustained, will abate and cease to be payable from the date of damage or destruction until the Premises are reinstated and are no longer Unfit for Occupation.

32.5 Valuer

(a) If the Lessor and the Lessee do not agree upon a fair proportion of the Rent and Outgoings to be paid pursuant to this clause, then the fair proportion may be determined by a Valuer:

A. appointed by the Lessee and the Lessor;

B. who will be deemed to be acting as an expert and not as an arbitrator; and

C. whose decision will be final and binding on the Lessor and the Lessee.

(b) In default of agreement as to the appointment of a Valuer, then at the request of either the Lessor or the Lessee, the President for the time being of the Property Institute may nominate a Valuer whom the Lessor and the Lessee must appoint for the purposes of this clause.

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(c) The Valuer's Costs must be paid by the Lessor and the Lessee in equal shares.

32.6 Exceptions

The Lessee is not entitled to any rights under this clause 32 where:

(a) the damage or destruction causing the Premises to be Unfit for Occupation arises from the Lessee's act, neglect or default; or

(b) payment of insurance money in respect of the damage or destruction causing the Premises to be Unfit for Occupation is refused or withheld in whole or in part as a result of the Lessee's act, neglect or default.

32.7 Rights Preserved on Termination

Termination under this Part does not affect a Party's rights in respect of any prior breach.

PART 10 - INSURANCE

33. **By Lessor**

33.1 Insurance of Building

The Lessor may insure the Building against any risk (including loss of rent) which the Lessor may deem desirable from time to time for damage or destruction caused by means of any combination of events which cause damage to the Building including, fire, flood, lightning, storm, earthquake, war, explosion, civil commotion, vandalism, malicious damage or Act of God.

33.2 Reasonable Amount

The Lessor may insure the Building pursuant to this clause for whatever reasonable amount the Lessor may deem appropriate from time to time.

34. **By Lessee**

34.1 Types

(a) The Lessee must during the Term insure:

A. all plate glass and other glass on the Premises for the full and reasonable cost of the repair and the replacement of that glass;

B. for any public risk or risk to other parties including insurance against any liability for any Loss to any person or to any property which arises directly or indirectly from any use of the Premises for at least the amount specified in Item 16 or such reasonable amount as the Lessor may specify in writing from time to time; and

C. any other insurance policy reasonably required by the Lessor.

(b) The Lessee will be responsible to insure the Lessee's Plant in or on the Premises from time to time.

34.2 Policies

The Lessee must effect each insurance policy required under clause 34.1(a):

(a) in the names of the Lessor and the Lessee for their respective interests; and

(b) with a solvent insurer of good repute,

and on such other terms as the Lessor may reasonably require.

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34.3 Evidence

If requested at any time by the Lessor, the Lessee must produce receipts, certificates or other evidence of payment of the premiums or other fees.

34.4 Non-compliance

If the Lessee does not enter into or maintain the insurance policies referred to in clause 34.1(a) then the Lessor may enter into those policies of insurance and all Costs in doing so will be payable by the Lessee.

34.5 Lessee to Comply with Policies of Insurance

The Lessee must not do anything which may:

(a) increase the premium payable; or

(b) allow the insurer to refuse a claim,

under any insurance policy taken out in respect of the Land.

PART 11 - RELEASE AND INDEMNITY

35. Release

35.1 Risk

The Lessee agrees to occupy and use the Premises at the risk and expense of the Lessee.

35.2 Release

The Lessee releases, to the full extent permitted by Legislation or law, the Lessor and its employees, agents and contractors from any Claim resulting from any Loss in connection with:

(a) the Premises;

(b) any property in, on or around the Premises; and

(c) any person on the Premises,

unless caused by the wilful or negligent action of the Lessor.

36. Indemnity to Lessor

The Lessee indemnifies and must keep indemnified the Lessor from all Claims for which the Lessor may or becomes liable for in connection with:

36.1 Loss from any cause whatsoever to property or persons caused or contributed to by:

(a) the use or the occupation of the Premises by the Lessee or any Permitted Persons;

(b) a breach of the Lessee's Covenants or any other act, omission, neglect or default of the Lessee or any Permitted Person; or

(c) any incident occurring anywhere on or near any part of the Premises;

36.2 the exercise or attempted exercise of any of the Lessor's rights or remedies under this Lease;

36.3 any negligent use, misuse, waste or abuse by the Lessee or any Permitted Person of the facilities and Services appurtenant to the Premises; and

36.4 any overflow or leakage of water (including the mains water) in or from the Premises,

except if and to the extent that the Claim arises because of the Lessor's default or negligence.

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PART 12 - TRANSFER, ASSIGNMENT AND SUBLETTING

37. No dealings

37.1 Personal

This Lease is personal to the Lessee.

37.2 Consent to Dealings

Unless the Lessor first consents, the Lessee must not:

(a) transfer or assign this Lease;

(b) grant a sublease, licence or concession in respect of the Premises;

(c) part with possession of the whole or part of the Premises; or

(d) mortgage, charge or encumber any interest in this Lease or the Lessee's Plant.

38. Transfer or Assignment

38.1 Consent

If the Lessee wishes to transfer or assign this Lease, the Lessee must:

(a) give to the Lessor prior notice of its intention to transfer or assign this Lease pursuant to clause 37.2(a), including the following details:

A. the full name and address of the Proposed Lessee; and

B. the date of the proposed transfer or assignment;

(b) not be in default under this Lease other than a default that has been waived by the Lessor; and

(c) prove to the Lessor's reasonable satisfaction that the Proposed Lessee is:

A. respectable, responsible and solvent; and

B. capable of observing and performing the Lessee's Covenants.

38.2 Further Information

If requested by the Lessor, the Lessee must also provide:

(a) a detailed written statement, supported by such other evidence as may reasonably be requested by the Lessor, outlining the nature, character, reputation, financial status, business experience, assets and liabilities of the Proposed Lessee and (if the Proposed Lessee is a body corporate) the directors and shareholders of the Proposed Lessee; and

(b) true copies of all documents and contracts that are relevant to the proposed transfer or assignment.

38.3 Conditions of Consent

The Lessor may, as a condition of granting its consent, require the Lessee to hand to the Lessor before the transfer or assignment takes place:

(a) in a form and on terms acceptable to the Lessor:

A. a covenant from the Proposed Lessee and any incoming guarantor to comply with all the Lessee's Covenants;

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B. any securities which the Lessor reasonably requires in respect of the Proposed Lessee's obligations under this Lease, including bank guarantees and personal guarantees and indemnities;

C. a release from the Lessee of any existing or subsequent claims under this Lease; and

D. an indemnification from and against any Loss suffered by the Lessor as a result of any breach of the Lessee's Covenants by the Proposed Lessee; and

(b) copies of each insurance policy required in accordance with clause 34.1(a).

38.4 Consideration

Where the Lessee complies with its obligations under clauses 38.1 to 38.3, the Lessor will not unreasonably withhold the granting of its consent.

38.5 Timeframe

The Lessor must grant or refuse consent by notice given as soon as practicable and in any event within 42 days of receiving a written request from the Lessee.

38.6 Transfer of Shares in Companies

(a) Any change in the beneficial ownership or control of a majority of the company's shares constitutes an assignment of this Lease and will require the Lessor's prior consent or else the Lessee will be in breach of clause 37.2(a).

(b) The Lessor may grant its consent if the Lessee:

A. is not in default under this Lease other than a default which has been waived by the Lessor;

B. proves to the Lessor's reasonable satisfaction that the new directors or shareholders are:

i. respectable, responsible and solvent; and

ii. capable of observing and performing the Lessee's Covenants; and

C. if required by the Lessor, obtains personal guarantees and indemnities from the new directors or shareholders in a form and on terms acceptable to the Lessor.

(c) This clause 38.4 does not apply if the Lessee is a company listed on the Australian Stock Exchange, except if, as a result of the change, the company will no longer be listed.

39. Costs of Dealing with Lease

The Lessee must pay all the Lessor's costs of and incidental to:

39.1 the consideration of the Proposed Lessee and any transfer or assignment by the Lessee of this Lease or of the Lessee's interest in this Lease;

39.2 any sublease, licence or concession by the Lessee; or

39.3 any mortgage, charge or encumbrance of the Lessee's interest in this Lease or the Lessee's Plant.

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PART 13 - DEFAULT, RE-ENTRY AND TERMINATION

40. Essential Terms

40.1 Specified

Each of the Lessee's Covenants which are expressed or implied in the clauses specified in Item 18 are Essential Terms.

40.2 Unspecified

Other Lessee Covenants in this Lease may also be Essential Terms.

40.3 Treated as Repudiation

If there is a breach or default by the Lessee in respect of any Essential Term, the Lessor may treat such a breach or default as a repudiation by the Lessee of the terms of this Lease.

41. Events of Default

41.1 Types

An Event of Default will occur on any of the following events:

(a) there is a breach or default by the Lessee of an Essential Term;

(b) any Money Payable is not paid in full for a period of five Business Days after the Money Payable is due to be paid to the Lessor;

(c) there is a breach of the Lessee's Covenants and:

A. the breach cannot be remedied;

B. the breach cannot be remedied but the Lessor can be compensated and the Lessee does not pay to the Lessor the compensation for the breach within a reasonable time after the Lessor gives the Lessee notice to pay it; or

C. the breach can be remedied but the Lessee does not remedy it within a reasonable time after the Lessor gives notice to the Lessee requiring its remediation;

(d) the Lessee, being a natural person, becomes bankrupt or commits any act of bankruptcy in accordance with the *Bankruptcy Act 1966 (Cth)* or cannot pay his or her debts as they fall due;

(e) if the Lessee is a company, any ground exists on which a court may order the winding up of the Lessee pursuant to any provision of the *Corporations Act 2001 Cth)*;

(f) any mortgage, encumbrance, lien, debenture or floating or other charge is given or made without the Lessor's written consent over any of the assets or undertaking of the Lessee and having priority to the payment of Money Payable;

(g) any liquidator, provisional liquidator, administrator, receiver or manager is appointed of the Lessee or of any of the assets or undertaking of the Lessee;

(h) the Lessee agrees to enter into any composition with or assignment of property for the benefit of the Lessee's creditors other than for the purpose of amalgamation or restructure with the Lessor's prior consent;

(i) the Lessee or any director or secretary of the Lessee is convicted of any offence which is committed on or arises out of the Permitted Use or out of any activity on or associated with the Premises; or

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(j) any writ or warrant of execution or other process for the execution of any judgement for the payment of moneys including any order for the appointment of a receiver is levied on or imposed on any chattels or property on the Premises.

41.2 Landlord and Tenant Act Notice

The Lessor and the Lessee agree that:

(a) in the case of an Event of Default where notice is required to be given under Section 10 of the *Landlord and Tenant Act 1936 (SA)*, the period of 10 Business Days is a reasonable period for the Lessee to:

A. remedy any such default; or

B. make compensation to the satisfaction of the Lessor; and

(b) in the case of non-payment of Rent, no notice is required,

before the Lessor can exercise any of the Lessor's Remedies.

42. Remedies

42.1 Lessor's Remedies

(a) If an Event of Default occurs, then subject to clause 41.2, the Lessor may exercise any of the following Lessor's Remedies:

A. by notice to the Lessee, the Lessor may Terminate this Lease, take possession of the Premises and eject the Lessee and any other person on the Premises;

B. without Terminating this Lease, the Lessor may take possession of the Premises, eject the Lessee and any other person on the Premises and retain possession of the Premises until each breach of the Lessee's Covenants has been rectified. In all other respects the terms of this Lease will continue until this Lease expires or is otherwise Terminated; or

C. by notice to the Lessee, the Lessor may Terminate this Lease without prejudice to the Lessor's right to sue the Lessee in damages and convert the Lessee's occupation of the Premises to a monthly tenancy. From that time, the Lessee will hold the Premises as a tenant from month to month in accordance with clause 4.

(b) The Lessor's Remedies may be exercised:

A. in addition to any other right or remedy which the Lessor may have under this Lease, at law, in equity or otherwise;

B. either with or without prior notice (subject to any terms of this Lease or Legislation which may require notice); and

C. individually or in combination of any other of the Lessor's Remedies or any other remedy which the Lessor may have at law or in equity.

42.2 Damages - General

(a) The Lessee must compensate the Lessor in respect of, and the Lessor is entitled to recover damages for:

A. any breach of a Lessee's Covenant;

B. the early termination of this Lease;

C. the recovery of the Premises; or

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D. the ejectment of the Lessee or any other person from the Premises,

or for any other remedy or relief.

(b) The Lessor's entitlement under this clause is in addition to any other right or remedy which the Lessor may have under this Lease, at law, in equity or otherwise.

42.3 Damages - Repudiation

(a) The Lessee must compensate the Lessor, and, the Lessor is entitled to recover damages for all Loss suffered by reason of or arising from the repudiation by the Lessee of the terms of this Lease, including:

A. for the Loss suffered by the Lessor by reason of the repudiation; and

B. for the loss of the benefit of the Lessee performing the Lessee's Covenants from the date of Termination until the end of the Term.

(b) The Lessor's entitlement under this clause is in addition to any other right or remedy which the Lessor may have under this Lease, at law, in equity or otherwise

42.4 Not Limited

The Lessor's entitlement to recover damages from the Lessee or any other person will not be limited or affected by any of the following:

(a) if the Lessee abandons or vacates the Premises;

(b) if the Lessor elects to re-enter the Premises or terminate this Lease;

(c) if the Lessor accepts the Lessee's repudiation; or

(d) if a Party's conduct constitutes or may constitute a surrender by operation of law.

42.5 Mitigate Loss

(a) If the Lessor terminates this Lease, the Lessor must take reasonable steps to mitigate its Loss.

(b) The Lessor's conduct in mitigating its Loss does not constitute acceptance of the breach or repudiation or surrender by operation of law.

42.6 Cost of Default

The Lessee must pay all Costs arising from:

(a) the recovery or attempted recovery from the Lessee of any unpaid Money Payable;

(b) any premature Termination;

(c) any re-entry of the Premises by the Lessor;

(d) any distress for Rent;

(e) any surrender or giving up of possession of the Premises by the Lessee;

(f) any re-letting of the Premises after Termination by the Lessor; and

(g) any exercise of any right or remedy of the Lessor.

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43. **Waiver**

43.1 No Waiver

The Lessor's failure to exercise the Lessor's rights or delay in exercising the Lessor's rights arising from a breach of the Lessee's Covenants is not a waiver of that breach or of or any right, action or remedy of the Lessor.

43.2 No Prevention

The demand or acceptance from the Lessee of an overdue payment does not prevent the Lessor from exercising or enforcing the Lessor's other rights under this Lease.

44. **Appointment of Attorney**

44.1 On Termination

If the Lessor terminates this Lease in accordance with this Part:

(a) the Lessee must immediately and at the Lessee's Cost, cause to be done all things necessary to effect the registration or notation on the register book of the Termination of the Lease; and

(b) if required by the Lessor, the Lessee must execute a surrender of this Lease and procure the registration of that surrender at the Lands Titles Office.

44.2 Appoint Attorney

The Lessee irrevocably appoints the Lessor as the attorney of the Lessee to do all such things and to execute all such documents as may be necessary to give full effect to any re-entry by the Lessor, or any Termination or surrender of the Lease as provided in this Part and to effect the registration of any necessary instrument.

45. **Rights Preserved on Termination**

45.1 No Affect

Termination under this Part does not affect a Party's rights in respect of any prior breach.

PART 14 - END OF TERM

46. **Surrender**

46.1 On Termination

On Termination, the Lessee must:

(a) peaceably surrender possession of the Premises to the Lessor in clean and in good and substantial repair and working order having regard to its obligations under this Lease;

(b) do all things necessary to facilitate the taking of possession by the Lessor; and

(c) promptly deliver and assign (as appropriate) all Locks to the Lessor.

46.2 Fail to Comply

If, on the day after Termination, the Lessee fails to comply with any of its obligations under clause 46.1, then the Lessor may take such action as may be appropriate to remedy such breach and recover as a debt from the Lessee all Costs incurred by the Lessor including:

(a) damages for loss of rent between the date of Termination and the date that the breach is remedied; and

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(b) the Costs of causing the breach to be remedied.

47. Removal of Lessee's Plant and Alterations

47.1 Remove and Make Good – Lessee's Plant and Alterations

Unless the Lessor otherwise consents, on or before Termination the Lessee must remove:

(a) all of the Lessee's Plant from the Premises;

(b) subject to clause 31.6, any alterations effected during the Term by the Lessee,

and cause to be repaired and made good in a proper and tradesmanlike manner any damage to the Premises arising from the removal of the Lessee's Plant or alterations.

47.2 Failure to Comply

If, within five Business Days after Termination, the Lessee, in breach of clause 47.1, has not removed any Lessee's Plant or alterations and restored the Premises then at any time after that period the Lessor may, subject to the Leases Act if applicable:

(a) declare any of the Lessee's Plant or alterations to be abandoned and, upon serving notice of such declaration upon the Lessee, all such Lessee's Plant and alterations become the property of the Lessor who may deal with the items in such way it sees fit; or

(b) remove, store or dispose of any of the Lessee's Plant or alterations from the Premises at the Lessee's risk in such manner as the Lessor sees fit and recover as a debt from the Lessee all Costs incurred by the Lessor in taking such action including damages for loss of Rent between the date of Termination and the date that the Premises are rendered lettable.

47.3 Costs

The Lessee:

(a) must pay the Lessor, as a liquidated debt payable on demand, any Costs incurred by the Lessor in exercising its rights under clause 47.2 less any money received on disposal of the Lessee's Plant and alterations; and

(b) indemnifies the Lessor against any Claim against the Lessor resulting from the Lessor exercising its rights under clause 47.2.

PART 15 - LESSOR'S COVENANTS AND RIGHTS

48. Covenants

48.1 Quiet Possession

If the Lessee observes all of the Lessee's Covenants then, subject to the terms of this Lease, the Lessee will have quiet possession of the Premises during the Term and without any interruption or disturbance by the Lessor.

48.2 Failure of Services

The Lessee will have no Claim against the Lessor or be entitled to terminate this Lease because:

(a) the Services fail to operate; or

(b) the Lessor shuts down or removes any Services to repair, maintain or replace them or because of the provisions of any Legislation.

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48.3 Other Person Becoming Entitled to Rents Etc.

(a) If any person other than the Lessor becomes entitled to receive the Rent, that person will have the benefit of all the Lessee Covenants.

(b) If required by and at the Lessor's reasonable cost, the Lessee will enter into reasonable covenants with such person who becomes entitled to receive the Rent.

49. Rights

49.1 Inspection

(a) Subject to clause 49.1(b), the Lessor may at any reasonable time enter the Premises:

A. to view the condition of the Premises;

B. to effect any permitted work or repairs to the Premises; or

C. for any other reasonable purposes.

(b) Except in the case of an emergency (when the Lessor may enter the Premises at any time and in any way which is reasonable in the circumstances), before the Lessor enters the Premises for whatever reason lawfully permitted pursuant to this Lease, the Lessor must comply with the following requirements:

A. the Lessor must give to the Lessee reasonable notice of the Lessor's intention to enter the Premises; and

B. the Lessor will comply with any reasonable security requirements imposed by the Lessee from time to time in relation to the Premises.

49.2 Repair to Damaged Premises

If the Premises are damaged or in need of repair during the Term, the Lessor may enter the Premises at any time and may do whatever works the Lessor may deem necessary to repair the Premises in whole or in part.

49.3 Exhibition for Sale or Letting

During the last two months of the Term, or at any time if the Lessor wishes to offer the Premises for sale:

(a) the Lessee must permit the Lessor, its employees, contractors or agents, to enter the Premises at all reasonable times with persons desiring to view the Premises, whether for purchase or letting or otherwise; and

(b) the Lessee must permit the Lessor to attach to and display on the Premises a notice or notices for reletting or sale of the Premises.

49.4 Transfer

Subject to the terms of this Lease, the Lessor may at any time sell, transfer, assign, mortgage, encumber or charge the Premises and the Lessor's interest in the Premises.

49.5 Managing Agent

(a) The Lessor may appoint a Managing Agent to delegate any of the rights, powers, authorities or privileges of the Lessor under this Lease.

(b) If communication from the Lessor and communication from the Managing Agent are inconsistent, the communication from the Lessor will prevail to the extent of that inconsistency.

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49.6 Joint Lessors

If more than one person is named as the Lessor in Item 1 then any direction or notice on behalf of the Lessor may be given by or with the authority of any one or more of those persons.

50. Rules

50.1 Rules

(a) At any time for any reasonable cause, the Lessor may publish Rules regulating the use of the Land.

(b) The Lessor may change the Rules from time to time and in any manner provided that any change must be for the better management of the Land.

(c) The Lessor must notify the Lessee of the Rules and any change to those Rules.

50.2 Binding

As and from the date upon which the Lessor notifies the Lessee of the Rules or of any change, the Rules will bind the Lessee as if the Rules were specifically included within the terms of this Lease.

50.3 Inconsistent

If the terms of this Lease and the terms of the Rules are inconsistent, the provisions of this Lease will prevail to the extent of the inconsistency.

51. Redevelopment

51.1 Notice

(a) If the Lessor proposes to substantially repair, renovate or reconstruct the Premises and the Lessor decides that the work cannot be carried out practicably without vacant possession of the Premises, the Lessor may give the Lessee at least six months' notice terminating this Lease (**Termination Notice**).

(b) The Termination Notice must:

A. detail the plans for the building work; and

B. state the date of termination.

51.2 Termination

(a) After receiving the Termination Notice, the Lessee may terminate this Lease on giving five Business Days' notice.

(b) The Lessee must execute and deliver to the Lessor with its notice those documents listed in clause 51.3(a).

51.3 No Termination

(a) If the Lessee has not exercised its right to terminate this Lease within one month of the expiry date then the Lessee must execute and deliver to the Lessor prior to the expiry date:

A. a surrender of this Lease in registrable form by mutual consent and for no monetary consideration; and

B. the original "Lessee's copy" of this Lease.

(b) All costs except the Lessee's legal costs of surrendering this Lease are to be paid by the Lessor.

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(c) All documents are to be prepared by the Lessor.

52. **Land Division**

52.1 Lessor's Right to Subdivide

The Lessor may subdivide the Land provided that the subdivision does not materially prejudice the enjoyment by the Lessee of the Premises.

52.2 Lessee to Consent

Subject to clause 52.1, the Lessee must:

(a) consent in writing to any subdivision;

(b) promptly execute any instrument or other document prepared or required by the Lessor; and

(c) do all that is necessary to assist the Lessor to enable the subdivision.

PART 16 - MISCELLANEOUS

53. **Notices**

53.1 Form

Any notice required to be given or served by a Party under this Lease:

(a) must be in writing;

(b) signed by that Party or the solicitor for that Party;

(c) is sufficiently served on a Party by delivering it to or posting it by certified mail to that Party's address specified in Item 3 or any other address which any Party by notice to the other Parties nominates; and

(d) is sufficiently served on the Lessee if delivered to the Premises.

53.2 Time of Service

Any notice served pursuant to this Lease is taken to be received:

(a) in the case of delivery, on that day, unless delivered after 4:00 pm, then on the next Business Day; and

(b) in the case of post, on the second Business Day after it is posted.

54. **Consent of Lessor**

54.1 Terms

Where the consent of the Lessor is required pursuant to any term of this Lease, then, unless specified otherwise, the consent:

(a) must be evidenced in writing;

(b) may be granted at the Lessor's discretion; and

(c) may be subject to such conditions as the Lessor sees fit.

55. **Law**

55.1 Law of the Lease

The law of this Lease will be the law of the State of South Australia.

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55.2 Proceedings

Any proceeding in relation to this Lease may be taken in a Court or Tribunal of competent jurisdiction at Adelaide and all parties to that proceeding must submit to the jurisdiction of that Court or Tribunal.

56. **Set off**

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

57. **Trusts**

57.1 No Acknowledgment

The Lessor is not bound to acknowledge or to give effect to any trust or of any beneficial interest in this Lease or otherwise held by the Lessee for any other person notwithstanding that the Lessor may have notice of such an interest and may have consented to it.

57.2 Treat the Lessee as Owner

The Lessor may treat the Lessee as the sole and beneficial owner of the Lease and may exercise any right or remedy against the Lessee personally and any property of the Lessee notwithstanding that such property may be held by the Lessee on or subject to any trusts or otherwise.

PART 17 - SECURITY

58. **Personal Property Securities Act**

58.1 Definitions

In this clause 58:

Lessee PPS Items means any item of Personal Property:

(a) which is owned or leased by the Lessee;

(b) which is situated on the Premises at any time during the term of this Lease; and

(c) in which the Lessor can require the Lessee to transfer ownership to the Lessor, or in which the Lessee is required to transfer ownership to the Lessor, before or after the end of the term of this Lease,

but does not include any Lessor PPS Items;

Lessor PPS Items means any item of Personal Property which:

(a) is owned or leased by the Lessor; and

(b) is situated on the Premises at any time during the term of this Lease;

Personal Property has the meaning given to it in the PPSA;

PPSA means *Personal Property Securities Act 2009 (Cth)*; and

Security Interest has the meaning given to it in the PPSA.

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58.2 Charge

The Lessee:

(a) charges its interest in all Lessee PPS Items in favour of the Lessor, as security for the performance of the Lessee's obligations under this Lease, including but not limited to the Lessee's obligations to transfer ownership in the whole or any part of the Lessee PPS Items to the Lessor;

(b) acknowledges and agrees that the charge granted by the Lessee under clause 58.2(a) constitutes the grant of a Security Interest which the Lessor is entitled to register under the PPSA;

(c) acknowledges that the grant of this Lease also constitutes the grant of a Security Interest in the Lessor PPS Items in favour of the Lessor, which interest the Lessor is entitled to register under the PPSA; and

(d) must do all things required by the Lessor from time to time (including, without limitation, signing any documents required by the Lessor) to enable the Lessor to register the above Security Interests under the PPSA, and to otherwise perfect its Security Interest in the Lessee PPS Items and the Lessor PPS Items so that the Lessor's Security Interests have priority over any other Security Interests under the PPSA in relation to the Lessee PPS Items and the Lessor PPS Items.

58.3 No Creation of Security Interest

The Lessee:

(a) warrants that it has not created a Security Interest in respect of any Lessor PPS Items on or prior to execution of this Lease; and

(b) must not create a Security Interest in respect of any Lessor PPS Items or Lessee PPS Items in favour of any person other that the Lessor without the Lessor's prior consent.

58.4 Indemnity

The Lessee must indemnify the Lessor against all Claims and Loss incurred by the Lessor as a consequence of any breach by the Lessee of this clause.

58.5 Acknowledgment

The Lessee acknowledges and agrees that:

(a) it has no right under the PPSA to receive a copy of any 'verification statement' or 'financing charge statement' (as those terms are defined in the PPSA); and

(b) on Termination, the Lessee must sign (and procure any holder of a registered Security Interest to sign) any document that the Lessor considers necessary or under or as a result of the PPSA to discharge any registered Security Interests under the PPSA in relation to the Lessee PPS Items and the Lessor PPS Items.

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IMPORTANT NOTICE

EXCLUSION OF WARRANTY OF FITNESS FOR PURPOSE

THE LESSOR 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.

DATED 25 November 2020

EXECUTION

THE CORPORATION OF THE TOWN OF WALKERVILLE COMMON SEAL

By **LESSOR**

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

Signature of Mayor

Signature of Chief Executive Officer

ELIZABETH FRANCEL
Name of Mayor (print)

KIKI GRISTOL
Name of Chief Executive Officer (print)

By **LESSEE**

EXECUTED by **ACROSS AUSTRALIA PARKS & RESORTS PTY LTD** ACN 621 588 421 in accordance with section 127(1) of the Corporations Act 2001 (Cth) by:

Signature

ANDREW CHAPMAN
Print Full Name MARK MANTEIT

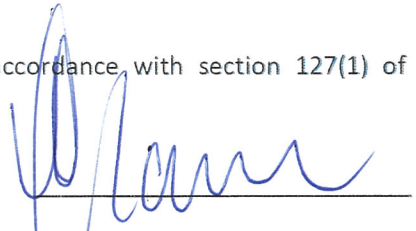
DIRECTOR
Print Position DIRECTOR

and if only one person has signed, that person states that he/she has executed this document as sole director and sole company secretary of the company

RELEASED

RELEASED

EXECUTED by **INNOVIV PTY LTD** ACN 613 201 in accordance with section 127(1) of the Corporations Act 2001 (Cth) by:

_____ Signature 

_____ Print Full Name ANDREW CHAPMAN

_____ Print Position DIRECTOR

and if only one person has signed, that person states that he/she has executed this document as sole director and sole company secretary of the company

RELEASED

RELEASED

SCHEDULE

Item 1 Lessor

The Corporation of the Town of Walkerville ABN 49 190 949 882

Item 2 Lessee

Across Australia Parks & Resorts Pty Ltd ACN 621 588 421 and Innoviv Pty Ltd ACN 613 201 353

Item 3 Addresses

Address of Lessor: 66 Walkerville Terrace, Gilberton SA 5081

Address of Lessee: both of 69 Lansdowne Terrace, Vale Park SA 5081

Item 4 Land

The whole of the land comprised in Certificate of Title Volume 5874 Folio 181 being land situated at 69 Lansdowne Terrace, Vale Park SA 5081 (comprising a lettable area of approximately 27,800m2, subject to survey)

Item 5 Premises

That portion of the land comprised in Certificate of Title Volume 5874 Folio 181 as delineated in red on the plan attached and marked Annexure A (comprising a lettable area of approximately 23,000m2 subject to survey)

Item 6 Commencement Date

1 December 2020

Item 7 Term

A term of 12 years commencing on the Commencement Date

Item 8 Further Term

Three further terms of ten years each commencing on 1 December 2032, 1 December 2042 and 1 December 2052 respectively

Item 9 Rent

A commencing annual rental of $495,000.00 exclusive of GST, subject to review in accordance with the provisions of this Lease

Item 10 Review Dates

The Rent will be reviewed on each anniversary of the Commencement Date.

The Rent will be reviewed and determined in accordance with Part 3 on the following dates and in accordance with the appropriate method of review:

(a) CPI Review Dates

Subject to Item 10(c), on each anniversary of the Commencement Date except where the Rent is adjusted by Market Review

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(b) Fixed Review Dates

Not applicable

(c) Market Review Dates

On 1 December in 2025, 2030, 2035, 2040, 2045, 2050, 2055 and 2060

Item 11 Percentage Increase

Not applicable

Item 12 Lessee's Proportion

82.7%

Item 13 Permitted Use

The commercial operation of a caravan and camping park known as 'Levi Adelaide Holiday Park'

Item 14 Excluded Use

Any use not expressly permitted by Item 13 of this Schedule

Item 15 Painting Dates

At the expiration of each period of 10 years throughout the Term

Item 16 Public Liability Insurance

No less than $20,000,000 per claim and unlimited in the annual aggregate or such higher amount requested by the Lessor from time to time

Item 17 Retail And Commercial Leases Act

Not applicable

Item 18 Essential Terms

Clauses 6, 11.2, 11.3(b), 12, 13, 14.1, 15.1, 16, 18.1, 18.2, 20.2, 24.1, 27.2(a), 30, 31, 34, 36, 37.2, 39 and 42.6

Item 19 Outgoings

Outgoings include:

(a) Costs relating to:

(i) insurances effected by the Lessor relating to the Premises, its use and occupancy;

(ii) repairs and maintenance of the Land including Costs of operating, supplying, maintaining, repairing and monitoring the Services and the plant and equipment required for those Services; and

(iii) management, administration and security, including having the Land managed by the Managing Agent,

but does not include any amount:

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ATTACHMENT A

(b) to the extent that the Leases Act applies, the Leases Act specifically prohibits the Lessor from including as an Outgoing;

(c) of GST that is either:

(i) included in an amount which is otherwise included in Outgoings for which the Lessor receives an input tax credit; or

(ii) recovered by the Lessor under clause 17.3; and

(d) that the Lessee is directly responsible for under the terms of this Lease.

Item 20 Special Conditions

(a) Operation of the Business

Without limiting clause 21 , the Lessee must:

(i) keep the Premises fully stocked and staffed, and operate the Business with due diligence and efficiency in a proper and businesslike manner;

(ii) keep the Premises open for trade during normal business hours from the Premises and (where permitted by law) during the days and hours from time to time notified by the Lessor to the Lessee as the designated operating hours for the Premises;

(iii) ensure that the Business is operated in a way in which:

(A) encourages and promotes visitors to the area; and

(B) is seen and experienced to be of a high quality and standard;

(iv) ensure that the Premises and the Lessee's Equipment are used, and the Business is operated, in manner that ensures the safety of customers and visitors;

(v) ensure that the Premises is used, and the Business is operated, in a way that meets or exceeds the Lessor Objectives;

(vi) ensure that the Premises is used, and the Business is operated, in a way that meets or exceeds the Lessor Objectives; and

(vii) ensure that it implements the Business Plan by the Commencement Date and continues to implement the Business Plan throughout the Term.

(b) Business Activities

The Lessee must:

(i) not carry on any offensive or dangerous activities on or from the Premises;

(ii) not create a nuisance or disturbance for the Lessor or for the owners or occupiers of any adjoining property; and

(iii) ensure at all times that activities conducted on or from the Premises do not discredit the Lessor.

(c) Alcohol

(i) The Lessee must:

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(C) not serve, sell or provide to persons alcoholic beverages on the Premises without the Lessor's prior written consent.

(D) take all reasonable steps to ensure the responsible consumption of alcohol in publicly accessible areas of the Premises.

(ii) Unless the Lessee first obtains the written consent of the Lessor, the Lessee must not apply for:

(E) a liquor licence under the *Liquor Licensing Act 1997*; or

(F) a gaming machine licence under the *Gaming Machines Act 1992*.

(iii) If the Lessee obtains a licence (or licences), the Lessee must not do (or fail to do) or allow any of its employees, agents, contractors, licensees or invitees to do (or fail to do):

(G) 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

(H) anything that may result in the relevant licence being revoked or suspended.

(d) Redevelopment of the Premises by Lessee

(i) The Lessee must at its cost and expense in all respects procure and complete the Redevelopment Works:

(A) on or before 30 November 2023;

(B) in a proper and professional manner;

(C) in a manner that does not expose people to a health and safety risk;

(D) using good quality materials;

(E) in accordance with the Lessee's plans and specifications approved by the Lessor (acting reasonably);

(F) in accordance with the Lessee's expression of interest document and select tender submission provided to the Lessor on 30 June 2020 and having reference number "E01202066783";

(G) in accordance with all approvals and the requirements of authorities;

(H) in accordance with the reasonable directions of the Lessor and the Lessor's representative;

(I) in a manner so as not to:

(1) unreasonably disturb other customers of the Business; or

(2) prevent or hinder access to the Premises or any part of them by the Lessor or any person authorised by the Lessor;

(ii) In carrying out the Redevelopment Works the Lessee must:

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(A) ensure that the Lessee's personnel comply with the requirements of all relevant building site awards and conditions relevant to the construction of the Redevelopment Works;

(B) ensure that any defects in the Redevelopment Works are rectified promptly.

(iii) The Lessee indemnifies the Lessor against any action or demand due to any damage, loss, injury or death caused or contributed to by the Redevelopment Works,

(iv) The Lessee releases the Lessor from any action or demand due to any damage, loss, injury or death occurring in or near the Premises, except to the extent caused by a negligent act of the Lessor.

(v) The Redevelopment Works and the use by the Lessee of the Premises are at the Lessee's risk in all respects.

(vi) The Lessee is responsible for the Redevelopment Works in the same way and in the same manner as the Lessee's Plant.

(vii) Unless otherwise agreed in writing between the parties, all Redevelopment Works, alterations and additions to the Land or the Premises by the Lessee become the property of the Lessor on the termination or earlier expiration of this Lease.

(viii) In this special condition "**Redevelopment Works**" means the purchase and installation of fixtures, fittings and improvements of the Business operating from the Premises, including but not limited to new cabins and common area facilities which must not be less than a capital expenditure of no less than $2,890.000.00 inclusive of GST.

(e) Repair and Maintenance – specific obligations

Without limiting clauses 27, the Lessee must:

(i) immediately repair or replace all damaged or broken glass in or about the Premises and the Lessee's Equipment including external windows with glass of the same or similar quality and all damaged or broken light globes and fluorescent tubes;

(ii) maintain and undertake minor repairs to all roads, paths, causeways and surfaced areas on the Premises, including by keeping the verges and surfaces of such roads, paths, causeways and surfaced areas free from weeds and other noxious plants;

(iii) maintain and repair:

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(C) water pumps;

(D) hot water services and heaters in the amenities blocks;

(E) barbecues;

(F) kitchen; and

(G) the swimming pool (if any) and all associated equipment, including but not limited to pumps and filtration equipment;

situated on or in the Premises;

(iv) maintain and repair the:

(A) fences;

(B) water storage tanks;

(C) street lighting by replacing all damaged or broken light globes and fluorescent tubes;

(D) camp kitchen;

(E) shelters and amenities;

(F) sullage pipes and electrical cabling that is situated above the surface of the ground and all associated connections; and

(G) fire safety equipment;

situated on or in the Premises; and

(v) ensure that tagging and testing of all electrical equipment used by the Lessee at the Premises and the Lessee's Equipment is completed at least every twelve (12) months during the Term.

(f) Gardening

The Lessee must:

(i) keep and maintain at all times all lawns, shrubs, trees, plants, flowers and gardens adjacent to or comprised in the Premises neat, tidy, well trimmed and pruned including watering and nurturing them on such occasions as they require to subsist and flourish and removing any branches or limbs which are dead or impeding access to any part of the Premises or that pose a safety risk to users of the Premises; and,

(ii) not cause, permit, suffer or allow without the prior written consent of the Lessor, any lawns, shrubs, trees, plants, flowers or gardens or any other such vegetation to be destroyed or damaged in any way.

(g) Right to rectify

The Lessor may at the Lessee's cost do anything which the Lessee should have done under this Lease but which the Lessee has not done or which the Lessor reasonably considers the Lessee has not done properly, and such costs are recoverable in the same manner as the Rent.

(h) Meetings

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The Lessee and the Lessor must meet not less than once every twelve (12) months at a mutually convenient time and place to review and discuss the Lessee's efforts in implementing and updating the Business Plan and to discuss any other matters relevant to the operation of the Business.

(i) Reporting

(i) The Lessee must keep accurate and up to date records relating to its operation and management of the Business, including:

(A) details of all bookings made;

(B) details of all licences granted to visitors to occupy caravans, camp sites, cabins and units, including the number of people who occupy each site and when and for how many days each visitor or group of visitors occupy a caravan, camp site, cabin or unit;

(C) copies of all written feedback received from visitors and written records of all verbal feedback received from visitors;

(D) copies of all licences and other agreements entered into in respect of the Premises; and

(E) financial records.

(ii) The Lessee must supply to the Lessor within two (2) business days of request , a report which at a minimum includes:

(A) a summary of the information required to be maintained under subclause (i) of this special condition for the preceding year;

(B) commentary on trends identified in occupancy rates for the previous year;

(C) commentary on any works carried out by the Lessee at the Premises in the preceding year; and

(D) commentary on the Lessee's efforts in implementing the Business Plan in the preceding year.

(iii) Upon any reasonable request by the Lessor, the Lessee must provide the Lessor with copies of any records kept by the Lessee pursuant to subclause (i) of this special condition.

(j) Asbestos

(i) The Lessee acknowledges that there is asbestos located at the Premises.

(ii) The Lessor maintains a register of any asbestos located at the Premises as required by Statutory Requirements.

(iii) The Lessee must take all necessary precautions whilst it is occupying the Premises in relation to any asbestos located at the Premises and must immediately notify the Lessor of any risk or hazard identified by the Lessee relating to any asbestos.

(k) Lessor Works

(i) Except to the extent caused or contributed by the Lessee, the Lessor is responsible for the following, at its cost ("**Lessor Works**"):

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ATTACHMENT A

(F) all repairs and maintenance of the building on the Land known as "Vale House" and also, for the Morten Bay Fig Tree, as are required from time to time;

(G) prior to any redevelopment works by the Lessee pursuant to special condition (d) of this Item 20, procure an infrastructure service report that advises on the condition and necessary repairs of the electrical, fire, water, sewer and gas infrastructure servicing the Premises.

(H) following the Lessor's receipt of an infrastructure service request, undertake necessary repairs of the underground water and sewerage infrastructure and associated services as the Lessor deems necessary in is absolute discretion;

(I) all underground infrastructure servicing the Land;

(J) all treatment works of the salt damp affecting "Vale House";

(K) removal of any asbestos located in the amenities building (to the extent it is deemed unsafe by the Lessor's contractor); and

(L) procure a suitable and qualified contractor to prepare a storm water management plan for the Premises.

(ii) The Lessee irrevocably grants to the Lessor, and its invitees, clear access to the Premises for all purposes in connection with the Lessor Works.

(iii) The Lessee acknowledges that:

(M) the Lessor Works may occur in various stages;

(N) the Lessor Works may affect the business operated by the Lessee;

(O) the Lessor Works may be subject to change and will be conditional on a wide range of factors including planning, building and development approval and the Lessor requirements;

(P) the Lessor does not warrant or guarantee the scope of works that may be carried out by the Lessor Works.

(iv) The Lessee agrees not to make a claim against the Lessor in relation to disturbance or disruption arising from the works undertaken in connection with the Lessor Works.

(l) Other

(i) The Lessor acknowledges that for the purposes of the Local Government Act 1999, the Land is classified as community land and that the Lessor has undertaken public consultation and/or been granted Parliamentary approval in accordance with the Local Government Act 1999 (SA).

(ii) The Lessee must not lodge or cause or permit to be lodged any absolute caveat over the Premises.

(iii) Without limiting the Lessee's obligations under this Lease, the Ombudsman Act 1972 (**Ombudsman Act**) provides that the Ombudsman may investigate any act of an individual or organisation done in the performance of functions conferred under a contract with certain public authorities. The Lessee agrees to ensure timely compliance with all obligations arising under the Ombudsman Act, and any other applicable Legislation, in relation to any such investigation involving the Lessor.

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(iv) The Lessee acknowledges that in entering into a contract with the Lessor it will be considered to be a public officer for the purposes of the Independent Commissioner Against Corruption Act 2012 (SA) (**ICAC Act**) and will be obliged to comply with the ICAC Act and the directions and guidelines issued pursuant to the ICAC Act.

(v) For the purposes of the Residential Parks Act 2007 (SA) the Lessee undertakes to the Lessor to operate and manage the Business as to ensure that no person may claim an entitlement to reside at the Premises in excess of 5 years unless the Lessor has expressly consented in writing. This obligation expressly excludes those residents of the Premises who are, as at the Commencement Date, entitled to long term residency rights under the Residential Parks Act 2007 (SA).

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ANNEXURE A
Plan of Premises



ATTACHMENT A

ANNEXURE B
Lessor Objectives

The Lessor's Objectives for the Premises, the operation of the Business and this Lease are to:

1. ensure that the Premises is available at all times for use by the community and visitors to the area:

2. ensure that the Premises is operated and maintained in accordance with this Lease;

3. ensure that the standard of the facilities available at the Premises are maintained to their current RAA rating standard (or a similar standard) and improved during the Term;

4. ensure that the Business and Premises is operated and maintained to a high standard which encourages visitors to the area;

5. ensure that fees and charges for the use of facilities at the Premises are fair and competitive so as to attract and encourage visitors to the area;

6. promote the health, safety and welfare of all persons engaged in or affected by or using the amenity created by the Premises and the Services;

7. ensure the provision of ongoing, effective communication and co-operation between the Lessor and the Lessee; and

8. fulfil the Lessor's obligations under the *Local Government Act 1999* (SA).

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ANNEXURE C
Lessor's Plant

[INSERT LIST]

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ATTACHMENT A

DATED

CERTIFICATION

Lessor

The Prescribed Person has taken reasonable steps to verify the identity of the Lessor.
The Prescribed Person holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.
The Prescribed Person has retained the evidence to support this Registry Instrument or Document.
The Prescribed Person has taken reasonable steps to ensure that the Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.

Signed By:

Name of Certifying Party
Capacity
for:

Lessee

The Prescribed Person has taken reasonable steps to verify the identity of the Lessee.
The Prescribed Person holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.
The Prescribed Person has retained the evidence to support this Registry Instrument or Document.
The Prescribed Person has taken reasonable steps to ensure that the Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.

Signed By:

Name of Certifying Party
Capacity
for:

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ATTACHMENT A

FORM L1 (Version 1)
GUIDANCE NOTES AVAILABLE

LANDS TITLES REGISTRATION OFFICE
SOUTH AUSTRALIA

LEASE

FORM APPROVED BY THE REGISTRAR-GENERAL

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REGISTERED	
	REGISTRAR-GENERAL

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ATTACHMENT B

From: James McEwen
To: Ross Oates
Cc: James Kelly
Subject: RE: Levi Adelaide Holiday Park Lease Amendment - Council decision
Date: Friday, 22 March 2024 4:10:19 PM
Attachments: image001.png
image002.png
image003.png
image004.png
image005.png
image006.png
image007.png
image009.png
image010.png
image011.png
image012.png

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Hi Ross

Apologies for the delay in responding.

Short answer

1. The best way to deal with a compromise is to amend clause 51 via a Deed of Variation of so that Council cannot invoke it until an agreed date.

2. The parties need to agree on a time frame and if they cannot then the lessee has no right to force an amendment.

3. If not amended it appears that the Lessee will be unable to obtain finance to develop the park.

4. While it is true that the lessee agreed to clause 51, it is also true that most tenants of commercial leases (especially where they are making capital improvements) would not have allowed a redevelopment clause to remain in the lease during negotiations. If it was to remain, it would normally have been negotiated to ensure there is a reasonable window of time for the lessee to spend money developing the park (which ultimately benefits the community) without the risk of the Council terminating.

5. This is a commercial decision for Council. If it agrees to the proposal put forward by the lessee I confirm it can be achieved via Deed of variation.

Advice

The lessee is correct in saying that 42 year leases are not uncommon these days. Previously the LG Act restricted the maximum to 21 years. This caused all sorts of problems for caravan and tourist parks for the same reason being raised here. In fact it was one of the drivers for amending the LG Act. The most common caravan park lease now is 21 plus 21. The lessee having the benefit of the right to extend.

A compromise in the circumstances would be to support investment in the park by the lessee by amending the lease so that the redevelopment clause 51 is not available for use until 1 December

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2052 as suggested by them. This would (according to the lessee) mean they can obtain necessary finance from their bank.

Ultimately this is a commercial decision for the Council but it can be achieved by Deed of variation that amends clause 51 so that it can only be invoked after an agreed time. The issue is comes down to the agreed time frame. Assuming the proposal by the lessee is the shortest on offer then Council needs to consider whether this is acceptable.

I am happy to discuss and clarify this with you further.

Regards

James McEwen
Partner

Mellor Olsson Lawyers

Pirie House
Level 6, 89 Pirie Street
Adelaide SA 5000

08 8414 3494
jmcewen@molawyers.com.au
www.molawyers.com.au

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From: Ross Oates <roates@walkerville.sa.gov.au>
Sent: Tuesday, March 19, 2024 1:56 PM
To: James McEwen <jmcewen@molawyers.com.au>
Cc: James Kelly <jkelly@walkerville.sa.gov.au>
Subject: FW: Levi Adelaide Holiday Park Lease Amendment - Council decision

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Hi James,

Thank you for your assistance regarding the Levi Adelaide Holiday Park Deed of

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Variation.

The matter was discussed at last night's Council Meeting and was voted down by Council (50/50 split decided by a casting vote) primarily due to some members feeling uneasy about the sheer length of the 42-year commitment and the perception that they would be restricting future Councils' abilities to make decisions regarding the site.

Following this decision, we advised Andrew Chapman (the Lessee) and requested clarification on the shortest possible term that would satisfy the bank and allow them to continue to invest in the park. Please see his response below for your reference.

As such, it seems we are in a predicament where we need to find some sort of compromise that satisfies all parties.

Are you able to provide advice on how the existing deed of variation could be modified so that (a) the Lessee will be able to secure their bank loan and (b) Council can be satisfied that its commitment to maintaining the park as for its current purpose is as short as possible.

Thanks for your assistance.

Regards,

Ross Oates
Strategic Projects Coordinator

Town of Walkerville
Assets & Infrastructure | 66 Walkerville Terrace, Gilberton SA 5081
PO Box 55 | Walkerville SA 5081
F +61 8 8269 7820 | M 0411 840 244
walkerville.sa.gov.au | roates@walkerville.sa.gov.au

From: Andrew Chapman <andrew@innoviv.com.au>
Sent: Tuesday, March 19, 2024 10:25 AM
To: Ross Oates <roates@walkerville.sa.gov.au>
Cc: Andrew MacDonald <amacdonald@walkerville.sa.gov.au>; James Kelly <jkelly@walkerville.sa.gov.au>
Subject: RE: Levi Adelaide Holiday Park Lease Amendment - Council decision

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Thanks Ross.

The bank had previously valued the property as if it were a freehold property, this allowed the loan value ratios to be pushed much higher than if it were a standard leasehold park. To get this same value, I am advised that a term of around 30 years would need to be in play.

Therefore, to continue to be able to invest in the property on an ongoing basis, and maintain our current levels of debt, we would ask that Council give consideration to simply amending clause 51 to say something along the lines of it cannot be invoked prior to the commencement of the final term that commences on 1st of December 2052. This gives security for another 28 years so long as we are not in default of the provisions in the lease.

Leases of 42 years in Parks in South Australia are becoming quite commonplace now, and in

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reading all the pre-amble that Council supplied in the tender process, it was very clear that there was no intention that the lease would be anything but for 42 years. At the time, on the basis of this, we never sought to have the clause removed then as it was clear that the classification of the land, and the objectives of Council were to have a high-quality park developed on the site.

The previous valuers never had an issue with the clause, however, the new valuers do, and as such, have effectively place a zero value on the property as the clause stands, therefore, to continue to be able to sustain finance gained to fund development, and to invest additional money into the site in the future, we need to be able to obtain a new valuation similar to the last.

Amending the clause allows us to do this, whilst still giving Council some flexibility in the future should they wish, whilst still keeping the intent of the original tender.

Regards,

Andrew Chapman
Managing Director

consulting@innoviv.com.au
0417 877 175
PO Box 97 Victor Harbor SA 5211
innoviv.com.au

Servicing all states across Australia

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From: Ross Oates <roates@walkerville.sa.gov.au>
Sent: Tuesday, March 19, 2024 10:06 AM
To: Andrew Chapman <andrew@innoviv.com.au>
Cc: Andrew MacDonald <amacdonald@walkerville.sa.gov.au>; James Kelly <jkelly@walkerville.sa.gov.au>
Subject: Levi Adelaide Holiday Park Lease Amendment - Council decision

Hi Andrew,

Following up on Andrew's phone call, unfortunately the recommendation to remove clause 51 from the existing Levi Adelaide Holiday Park lease agreement was voted down at last night's Council meeting.

To assist us in coming up with a revised approach and recommendation, are you able to advise what the shortest possible term would be to satisfy the bank and allow you to continue to invest in the park?

Once we have an indication of timeframes, we can take this information back to Mellor Olsson to have the deed of variation amended as appropriate. We'll then aim to get a revised report to the April Council meeting.

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Thanks for your assistance, please let us know if you have any further questions.

Regards,

Ross Oates
Strategic Projects Coordinator

Town of Walkerville

Assets & Infrastructure | 66 Walkerville Terrace, Gilberton SA 5081
PO Box 55 | Walkerville SA 5081
M 0411 840 244
walkerville.sa.gov.au | roates@walkerville.sa.gov.au

Connect with us

We acknowledge the Kaurna people as the traditional custodians of this land and respect their spiritual relationship with their country.



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Mellor Olsson Lawyers
ABN 44 157 825 957
lawyers@molawyers.com.au

DEED OF VARIATION

Between:

THE CORPORATION OF THE TOWN OF WALKERVILLE

("**Council**")

and

ACROSS AUSTRALIA PARKS & RESORTS PTY LTD

ACN 621 588 421

and

INNOVIV PTY LTD

ACN 613 201 353

("**Lessee**")

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THE SCHEDULE

Item 1 Effective Date	1 May 2024
Item 2 Lease	Lease between the Council and the Lessee dated 25 November 2020 for a term of twelve (12) years commencing on 1 December 2020 and expiring on 30 November 2032 with 3 renewal rights of 10 years each.
Item 3 Premises	That portion of the Land comprised in Certificate of Title Volume 5874 Folio 181 as delineated in red on the plan attached at Annexure A of the Lease and known as portion of Levi Adelaide Holiday Park
Item 4 Variations	Clause 51.1 of the lease is deleted and replaced with the following: 51.1 Notice (a) If the Lessor proposes to substantially repair, renovate or reconstruct the Premises at any time from 1 December 2052 and the Lessor decides that the work cannot be carried out practicably without vacant possession of the Premises, the Lessor may give the Lessee at least six months' notice terminating this Lease (**Termination Notice**). (b) The Termination Notice must: A detail the plans for the building work; and B. state the date of termination.

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DATE

PARTIES

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

ACROSS AUSTRALIA PARKS & RESORTS PTY LTD ACN 621 588 421 and **INNOVIV PTY LTD** ACN 613 201 353 both of 69 Landsdowne Terrace, Vale Park SA 5081 (**Lessee**)

BACKGROUND

A. The Council leased the Premises to the Lessee upon and subject to the terms and conditions in the Lease.

B. The Parties have agreed to vary the terms of the Lease.

AND THE PARTIES AGREE as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this document, unless the context otherwise requires:

'Effective Date' means the date described in Item 1 of the Schedule;

'Lease' means the memorandum of lease described in Item 2 of the Schedule;

'Premises' means the premises described in Item 3 of the Schedule;

'Schedule' means the schedule to this Deed.

1.2 General

In this document, unless the context otherwise requires:

1.2.1 a reference to any document is a reference to that document as varied, novated or replaced from time to time;

1.2.2 the singular includes the plural and vice versa;

1.2.3 a reference to a gender includes all genders;

1.2.4 the use of the word 'including' does not limit what else might be included;

1.2.5 a reference to a thing includes all or any part of it;

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1.2.6 where a word or phrase is defined, its other grammatical forms have a corresponding meaning;

1.2.7 a reference to a person or entity includes a natural person, partnership, corporation, trust, association, unincorporated body, authority or other entity;

1.2.8 a reference to a party includes that party's legal personal representatives, successors and permitted assigns;

1.2.9 a term which purports to bind or benefit two or more persons binds or benefits them jointly and severally;

1.2.10 headings are inserted in this document for convenience only and are not intended to affect its interpretation; and

1.2.11 a reference to a statute, ordinance, code or other law includes regulations and other instruments issued under it and consolidations, amendments, re-enactments or replacements of any of them.

2. VARIATION OF LEASE

The terms and conditions of the Lease are amended as set out in Item 4 of the Schedule with effect from the Effective Date and in all other respects the terms and conditions of the Lease (as amended) shall remain in full force and effect in their entirety.

3. COSTS

The Lessee will pay all of the costs of and incidental to the negotiation, preparation and execution of this Deed.

4. GOVERNING LAW

This document will be governed by the laws of South Australia. The parties submit to the jurisdiction of the courts of South Australia and agree to issue any proceedings relating to this document in those courts.

5. SEVERANCE

Every provision of this document is independent of the other. Any provision which is prohibited or unenforceable in any jurisdiction will be ineffective to the extent only of such prohibition or unenforceability and the other provisions will remain in force.

6. ASSIGNMENT

No party may assign or transfer any rights or obligations under this document without the written consent of each of the other parties.

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7. FURTHER ACTS

Each party will do all things necessary to give full effect to this document and the transactions contemplated by this document.

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EXECUTED BY

Council:

The **COMMON SEAL** of **TOWN OF WALKERVILLE** was affixed here in the presence of:

.....	.....
Director	Director/Secretary
.....	.....
Full Name	Full Name

**If only 1 person has signed that person states that he/she is the sole director and sole secretary of the company.*

EXECUTED BY

Lessee:

EXECUTED by)
ACROSS AUSTRALIA PARKS & RESORTS PTY LTD in accordance with the *Corporations Act 2001*:)

.....	.....
Director	Director/Secretary
.....	.....
Full Name	Full Name

**If only 1 person has signed that person states that he/she is the sole director and sole secretary of the company.*

RELEASED

EXECUTED by)

INNOVIV PTY LTD in accordance with)
the *Corporations Act 2001*:)

.....	.....
Director	Director/Secretary
.....	.....
Full Name	Full Name

**If only 1 person has signed that person states that he/she is the sole director and sole secretary of the company.*

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