



**PARK LANDS
LEASE AGREEMENT**
(Park [#])

IMPORTANT NOTICE

Retail and Commercial Leases (SA) 1995 (“Act”)

This Lease is exempt from the application of the Act pursuant to an exemption granted under section 77(1) of the Act by the Minister for Business Services and Consumer Affairs on 28 December 2011.

PARK LANDS LEASE AGREEMENT

THIS PARK LANDS LEASE AGREEMENT is made the day of 2023

BETWEEN: THE CORPORATION OF THE CITY OF ADELAIDE of Town Hall, King William Street, Adelaide SA 5000 (**Council**)

AND: [insert party details] ACN/ABN ### ### ### of [insert address] (**Lessee**)

BACKGROUND

- A. The Council has the care, control and management of the Park Lands.
- B. The Lessee has requested a lease to use the Leased Area for the Permitted Use.
- C. The Council has resolved to grant the Lessee a lease of the Leased Area and (if necessary) undertaken public consultation and/or been granted Parliamentary approval in accordance with the *Local Government Act 1999* and the *Adelaide Park Lands Act 2005*.
- D. The Council and Lessee wish to record the terms of their agreement in this Lease.

AND THE PARTIES AGREE as follows:

1. DEFINED TERMS AND INTERPRETATION

1.1 Introductory

In the Lease, unless the contrary intention appears:

- 1.1.1 a reference to this Lease is a reference to this document;
- 1.1.2 words beginning with capital letters are defined in clause 1.1;
- 1.1.3 a reference to a clause is a reference to a clause in this Lease;
- 1.1.4 a reference to an Item is a reference to an item in the First Schedule;
- 1.1.5 a reference to a Schedule is a reference to a schedule to this Lease; and
- 1.1.6 a reference to an Annexure is a reference to an annexure to this Lease

1.2 Defined terms

In this Lease:

Agreed Consideration means the Rent and all other consideration (money or otherwise) for any supply or use of the Leased Area and any goods, services or other things provided by the Council under this Lease (other than tax payable under clause 16).

APLA means the Adelaide Park Lands Authority established under the Park Lands Act.

Business Day means a day which is not a Saturday, Sunday or public holiday in Adelaide.

Claims includes any action, proceeding, right, claim or demand whether present or future, certain or contingent, due or may become due, known or unknown and including all costs and expenses (including legal expenses).

Commencement Date means the commencement date described in Item 2.

Contamination means the presence in, on or under land, air or water of a substance (solid, liquid or gel) or matter at a concentration or level above the concentration or level at which the substance or matter is normally present in, on or under land, air or water in the same locality being a presence that presents a risk of harm to human health or the Environment, or results in a non-compliance with or breach of any Environmental Law (and **contaminant**, **contaminated** and **contaminate** have a corresponding meaning).

Council means the party described as "Council" in this Lease and where the context permits includes the employees, contractors, agents and other invitees of the Council.

CPI means the consumer price index number published by the Australian Bureau of Statistics for All Groups (Adelaide) or the number which replaces it under clause 4.2.

Current CPI means the CPI for the quarter ending immediately before the relevant Review Date.

Current Market Rent means the best rent that can be obtained for the Leased Area in an open market by a willing but not anxious lessor with or without vacant possession and on the following conditions:

- on the terms and conditions of this Lease for the whole of the Term (and not just the remaining balance of the Term);
- on the basis that the Lessee has complied with all of the obligations under this Lease;
- not taking into account any damage or destruction to the Leased Area (including the Improvements) and not taking into account any resulting suspension or abatement of rent;
- not taking into account any disturbance or nuisance to the Lessee's use of the Leased Area caused by any act or neglect of the Lessor or any adjoining owner or occupier;
- not taking into account any improvements or fixtures erected or installed at the Lessee's expense which the Lessee is permitted to remove at the end of this Lease;
- taking into account any increase in value of the Leased Area arising from any permanent improvements at the expense of either the Lessee or the Lessor and which the Lessee shall not be entitled to remove;

- not taking into account any goodwill attributable to the Leased Area by reason of any trade, business or actions carried on by the Lessee; and
- not taking into account any cash, premium, payment, abatement, allowance or other incentive paid, offered or allowed in respect of this Lease or being offered or given in respect of comparable premises to induce lessees to take a lease of or remain in such comparable areas.

Default Rate means a rate of two per centum (2%) per annum greater than the published annual rate of interest charged from time to time by Westpac Banking Corporation on overdraft facilities of more than \$100,000.00 and if there is more than one rate published the higher of those rates.

Dispute means a dispute between the Council and the Lessee in relation to this Lease.

Environment includes:

- land, air and water;
- any organic or inorganic matter and any living organism; and
- human made or modified structures and areas.

Environmental Law means any Statutory Requirement that deals with an aspect of the Environment or health whether made before or after the Commencement Date.

GST has the same meaning as given to that term in the GST Legislation.

GST Legislation means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any ancillary or similar legislation.

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

Improvements means the interior and exterior of all built form and other improvements (including (all conveniences, Services, amenities and appurtenances of, in or to the Improvements) which are made to the Leased Area.

Insolvency Event means (in the case of a Lessee being a company or association):

- a meeting of the directors or members of the Lessee is convened to pass a resolution that an administrator of the Lessee be appointed or that the Lessee be wound up voluntarily;
- any person appoints an administrator of the Lessee;
- an application is made to any court to wind up the Lessee;
- an application is made pursuant to Section 411 of the Corporations Act 2001;
- a Controller, Managing Controller, Receiver or Receiver and Manager is appointed to the Lessee or in respect of any property of the Lessee; or
- the Lessee is deregistered or dissolved; or

means (in the case of a Lessee being a natural person):

- the Lessee commits an act of bankruptcy or a sequestration order is made against the Lessee;
- a creditor of the Lessee presents a creditor's petition against the Lessee under the *Bankruptcy Act 1966*;
- the Lessee presents a petition against himself or herself under the *Bankruptcy Act 1966*;
- the Lessee signs an authority under Section 188 of the *Bankruptcy Act 1966*;
- the Lessee gives a debt agreement proposal to the Official Trustee under Part IX of the *Bankruptcy Act 1966*, and that debt agreement proposal is accepted by the Lessee's creditors;
- the Lessee becomes subject to an order directing the Official Trustee or a specified registered Trustee to take control of his or her property before sequestration; or
- the Lessee is convicted of an indictable offence (other than a traffic offence).

Institute means the South Australian Division of the Australian Property Institute (or its successor or equivalent).

Lease means this lease including any attached annexures and schedules.

Leased Area means that portion of the Park Lands described in Item 1 including (if any) all Services.

Legislation includes any relevant Statute or Act of Parliament (whether State or Federal) and any regulation or by-law including by-laws issued by any Statutory Authority.

Lessee means the party described as "Lessee" in this Lease and where the context permits includes the employees, contractors, agents, customers and other invitees of the Lessee.

Lessee's Equipment means any and all fittings and other equipment installed on, brought on to or kept on the Leased Area by the Lessee (with or without the consent of the Council).

Loss means any loss, damage, death or injury.

Outgoings means the total of all amounts paid, payable or otherwise by the Council in connection with the ownership, management, administration of the Leased Area.

Park Lands means the Adelaide Park Lands as defined in the Park Lands Act.

Park Lands Act means the *Adelaide Park Lands Act (SA) 2005*.

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

Permitted Use means the use described in Item 5.

Plan means the plan comprising Annexure A.

Previous CPI means the CPI for the quarter ending immediately before the last Review Date (or if there has not been one, the Commencement Date).

Rent means the rent described in Item 3.

Resolving Body means LEADR or if that body no longer exists an equivalent Australasian organisation formed to promote dispute resolution.

Review Date means each date in Items 5.

Services means all services (including gas, electricity, water and sewerage and all plant, equipment, pipes, wires and cables in connection with them as applicable) to or of the Leased Area supplied by any authority, the Council or any other person the Council authorises.

Special Conditions means the special conditions (if any) in Item 7.

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

Statutory Requirements means all relevant and applicable Legislation and all lawful conditions, requirements, policies, notices, plans and directives issued or applicable under any such Legislation or by any Statutory Authorities.

Structural Work includes:

- repairing or replacing building facades or any external or internal load bearing structure essential for the stability or strength of the Improvements including foundations, columns, walls, floors and beams;
- repairs and replacements necessary to keep any buildings structurally sound, weatherproof and water tight;
- resurfacing any car parks, roads, paths and access ways; and
- works to retaining walls, kerbing and guttering.

Term means the term of this Lease commencing on the Commencement Date and expiring on the date described in Item 2.

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

- who will be appointed as agreed by the Council and the Lessee or, failing agreement the person holding or acting in the position of President of the Institute;
- who must have practised as a valuer with a minimum of five (5) years relevant experience; and
- who must act as an expert and not as an arbitrator.

Yearly Amounts means the aggregate of the Rent and other moneys payable by the Lessee during the Term.

1.3 Interpretation

Unless the contrary intention appears:

- 1.3.1 headings are for convenience only and do not affect interpretation;
- 1.3.2 the singular includes the plural and vice-versa;
- 1.3.3 a reference to an individual or person include a corporation, partnership, joint venture, authority, trust, state or government and vice versa;
- 1.3.4 a reference to any party in this Lease, or any other document or arrangement referred to in this Lease, includes that party's executors, administrators, substitutes, successors and assigns;
- 1.3.5 a reference to any document (including this Lease) is to that document as varied, novated, ratified or replaced from time to time;
- 1.3.6 a reference to any Legislation includes any statutory modification, re-enactment or any Legislation substituted for it, and all by-laws, regulations and rules issued under it;
- 1.3.7 a reference in this Lease to the Council's approval or consent, is to the Council's prior written approval or consent which unless otherwise specified may be granted or withheld in the absolute discretion of the Council;
- 1.3.8 "including" and similar expressions are not and must not be treated as words of limitation; and
- 1.3.9 the background forms part of this Lease and is correct.

2. **GRANT OF LEASE**

The Council grants and the Lessee accepts a lease of the Leased Area for the Term on the terms and conditions set out in this Lease.

3. **RENT**

3.1 **Payment of rent**

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

3.2 **Instalment**

If a rent instalment period is less than a month, the instalment for that period is calculated at a daily rate based on the number of days in the month in which that period begins and the monthly instalment which would have been payable for a full month.

4. **RENT REVIEW**

4.1 **Fixed review**

The Rent on and from each Review Date specified in Item 5[A] is to be reviewed to be increased as set out in the First Schedule.

4.2 **CPI Review**

The Rent on and from each Review Date specified in Item 5[B] is to be reviewed to movements in the CPI in accordance with the following formula:

$$R_2 = R_1 \times \frac{\text{Current CPI}}{\text{Previous CPI}}$$

Where:

R_2 is the Rent after the Review Date; and

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

4.3 **Change to CPI Index**

If the CPI is no longer published, either party may ask the President of the Institute to nominate an index which reflects the rate of price change in the area and group for the CPI and "CPI" then means that index. The parties must each pay one half of the President's costs for nominating an index.

4.4 **Current Market Review**

- 4.4.1 The Rent on and from each Review Date specified in Item 5[C] (if applicable) is to be reviewed to the Current Market Rent in accordance with this clause 4.4.
- 4.4.2 The Council may at any time give the Lessee written notice stating the Council's assessment of the Current Market Rent.
- 4.4.3 The Rent from and including the relevant Review Date is the amount stated in the Council's notice under clause 4.4.2 unless the Lessee gives the Council notice in writing within fourteen (14) days after the Council's notice disagreeing with that amount.
- 4.4.4 If the Council and Lessee do not agree the Rent under this clause 4.4, then it must be decided by a Valuer.
- 4.4.5 The Valuer agreed or appointed must make the determination of the Current Market Rent under this clause 4.4.
- 4.4.6 The Council and the Lessee may make written submissions to the Valuer within fourteen (14) days after the Valuer has been appointed or nominated.
- 4.4.7 The Council and the Lessee must forward to the other a copy of all written material forwarded or provided at the same time it is provided to the Valuer.
- 4.4.8 The Lessor and the Lessee may within fourteen (14) days of receiving a copy of the others written materials forward written comments to the Valuer on the other party's written submissions.
- 4.4.9 The Valuer's decision must be made within sixty (60) days of appointment and shall be provided in writing (with detailed reasons for the determination including specifying the matters required to be taken into account under this Lease in making that determination) and that decision will be final and binding.
- 4.4.10 If the Valuer's determination is more than the Lessee's assessment of the Current Market Rent then the Lessee will pay all costs of the valuation under this clause 4.4. In all other cases, the costs of the valuation will be shared equally between the Council and Lessee.

4.5 Rent pending determination

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

4.5.2 If the Rent to apply on and from a Review Date has not been agreed on or determined by that Review Date, the Lessee must continue to pay Rent until the Rent is determined.

4.6 Adjustment once rent determined

Once the Rent to apply on and from a Review Date is determined, the Lessee will pay any shortfall and the Council will allow any adjustment for overpayment at the next Payment Date.

4.7 No decrease in Rent

The Rent will not decrease on a Review Date.

4.8 Other review

Nothing in this Lease prevents the Council and the Lessee negotiating and agreeing on a Rent to apply from a Review Date without following these clauses.

5. UTILITIES AND RATES

5.1 Utilities and Services

The Lessee will pay when due all costs for the use of telephone, light and other facilities and the consumption of electricity, gas, oil, water and any and all other Services and utilities to the extent supplied to or used from the Leased Area.

5.2 No separate meter

If there is no separate meter for recording or measuring the Services and utilities supplied to or used from the Leased Area, then the Lessee must, if required by the Council, install the necessary meters (at the Lessee's cost).

5.3 Rates and other taxes

The Lessee must pay or reimburse the Council for all rates, taxes, levies or other charges (including any Council rates assessed by Council as a Statutory Authority) arising from the grant of this Lease or otherwise assessed, charged or incurred in relation to:

5.3.1 the Leased Area; or

5.3.2 the Lessee's use or occupation of the Leased Area.

5.4 Outgoings

The Lessee must pay or reimburse the Council all Outgoings provided that if those Outgoings include amounts that are referable to other areas (in addition to the Leased Area) then then the Lessee must pay a fair and just proportion of the Outgoings as reasonably determined by the Council having regard to those areas.

6. USE OF LEASED AREA

6.1 Permitted Use

The Lessee must use the Leased Area only for the Permitted Use and not use or allow the Leased Area to be used for any other use without the consent of Council.

6.2 Park Lands

6.2.1 The Lessee must comply with the approved management plans, guidelines and strategies (from time to time) of the Council and APLA with respect to the use and occupation of the Leased Area (being part of the Park Lands).

6.2.2 Without limiting any other term of the Lease, the Lessee acknowledges that the approval or consent of Council (including consent to any amendment or variation) may require the Council to undertake community and other forms of public consultation.

6.3 Offensive activities

The Lessee must:

6.3.1 not carry on any offensive or dangerous activities on or from the Leased Area or create a nuisance or disturbance either:

6.3.1.1 for the Council; or

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

6.3.2 use best endeavours to ensure at all times that activities conducted on or from the Leased Area will not bring any discredit upon the Council.

6.4 Use of Services

The Lessee will:

6.4.1 ensure that the Services are used responsibly and in accordance with any reasonable directions that may be given by Council; and

6.4.2 be responsible to repair or correct any damage or malfunction of the Services.

6.5 Statutory requirements

The Lessee must comply with all Statutory Requirements relating to the Lessee's use and occupation of the Leased Area.

6.6 No alcohol

The Lessee must not:

6.6.1 serve, sell or provide to persons; or

6.6.2 consume or allow persons to consume,

alcohol on or from the Leased Area without the consent of Council.

6.7 Signs

The Lessee must not place any signs or advertisements in or on the Leased Area (including on the outside or inside (if they can be seen from outside) of any Improvements), except signs which:

6.7.1 are approved by Council; and

6.7.2 comply with any relevant Statutory Requirements.

6.8 Dangerous or heavy equipment

6.8.1 The Lessee may only install or use equipment which is normally used in connection with the Permitted Use.

6.8.2 The Lessee must not without the consent of Council install or bring onto the Leased Area:

6.8.2.1 any electrical, gas powered or other equipment which may pose an improper danger, risk or hazard;

6.8.2.2 any dangerous chemicals or other dangerous substances; or

6.8.2.3 any heavy equipment or items which may damage the Leased Area;

except as is necessary as a result of or in connection with the Permitted Use and/or the Lessee's maintenance of the Leased Area.

6.9 Fire precautions

The Lessee must comply with all Statutory Requirements relating to fire safety including undertaking at the Lessee's cost any structural modifications or other building works to any Improvements which are required as a consequence of the Lessee's use or occupation of the Leased Area.

6.10 Security

The Lessee must keep any Improvements securely locked at all times when the Improvements are not occupied and must provide a key to the Improvements to the Council to be used in the case of an emergency.

6.11 No vehicles

The Lessee must not, and must not allow any other person to, drive, ride or park any vehicle on or over any part of the Park Lands without the consent of Council.

6.12 No warranty

The Council makes no warranty or representation regarding the suitability of the Leased Area or the Services for the Permitted Use or any other purpose.

6.13 Improvements

Unless otherwise agreed in writing or otherwise provided in this Lease, any Improvements will remain the property of the Lessee and will not form part of the Leased Area.

7. INSURANCE

7.1 Lessee must insure

The Lessee must keep current during the Term:

- 7.1.1 public risk insurance for at least the amount in Item 6 (or any other amount the Council reasonably requires) for each claim;
- 7.1.2 insurance in respect of any and all Improvements (including a policy in respect of any breakage and damage to plate and other glass);
- 7.1.3 all insurance in respect of the Lessee's Equipment; and
- 7.1.4 other insurances required by any Statutory Requirement or which the Council reasonably requires.

7.2 Requirements for Lessee's policies

Each policy the Lessee takes out must:

- 7.2.1 be with an insurer and on terms (including value of policy) approved by the Council;
- 7.2.2 note the Council's interest; and
- 7.2.3 cover events occurring during the policy's currency regardless of when claims are made.

7.3 Evidence of insurance

- 7.3.1 The Lessee must give the Council copies of certificates evidencing the currency of the policies the Lessee has taken out under this clause 7.
- 7.3.2 During the Term the Lessee must:
 - 7.3.2.1 pay each premium before it is due for payment;
 - 7.3.2.2 give the Council copies of certificates of currency each year when the policies are renewed and at other times the Council reasonably requests;
 - 7.3.2.3 not allow any insurance policy to lapse or vary or cancel it without the Council's consent; and
 - 7.3.2.4 notify the Council immediately if a policy is cancelled or if an event occurs which could prejudice or give rise to a claim under a policy.

7.4 Additional premium and excess

- 7.4.1 The Lessee must not do anything which may:
 - 7.4.1.1 prejudice or render void or voidable any insurance of the Leased Area; or
 - 7.4.1.2 increase the premium for any insurance of the Council.

7.4.2 If the Lessee does anything (with or without the consent of Council) that increases the premium of any insurance of the Council the Lessee must on demand pay the amount of that increase to the Council.

7.4.3 The Lessee must pay all excess amounts paid or payable by the Council relating to any accident or claim to the extent caused or contributed to by the Lessee.

8. REPAIR, MAINTENANCE AND ALTERATIONS

8.1 Maintenance and repair

8.1.1 The Lessee must at its own cost keep and maintain the Leased Area in good condition and repair and promptly rectify any damage to the Leased Area including:

8.1.1.1 keep, maintain, repair, and replace any Improvements and the Lessee's Equipment in good repair and condition (including undertaking all Structural Work and other capital maintenance, repair and replacement) to ensure any Improvements and the Lessee's Equipment are kept to a reasonable standard; and

8.1.1.2 undertake any upgrade to Services or other improvements to the Leased Area required by the Lessee as a result of the Lessee's use or occupation of the Leased Area.

8.1.2 Not less frequently than annually the Council and the Lessee must meet to review the state and condition of the Leased Area (including any Improvements) and the surrounding pedestrian and landscaped areas.

8.1.3 Each party must inform the other in writing of any critical structural or capital maintenance, replacement and repair required in respect of the Leased Area and any Improvements as soon as practicable after it becomes aware of it.

8.1.4 The Lessee must when complying with its obligations under this Lease use all reasonable endeavours to carry out any repairs and maintenance in a timely manner and cause as little interruption as possible to the Council and other users of the Park Lands.

8.1.5 Any disputes in regard to the subject matter of this clause 8 may be referred by either party for determination under clause 17 of this Lease.

8.1.6 If the Council is required to carry out any works which are the responsibility of the Lessee under this clause 8.1 then:

8.1.6.1 the Council may (without any obligation to do so and without any liability to the Lessee in respect of such works) execute such works as if it were the Lessee; and

8.1.6.2 the Lessee shall be liable for all of Council's reasonable costs and expenses in executing such works which the Council may recover the Lessee as a debt due and payable within fourteen (14) days of demand.

8.2 Alterations by Lessee

- 8.2.1 The Lessee must not carry out any alterations, additions or other works to the Leased Area without the consent of Council.
- 8.2.2 The Lessee must provide full details of any proposal to undertake any alterations, additions or other works (including any proposal to alter any Improvements) to the Council.
- 8.2.3 The Council may impose any reasonable conditions it considers necessary if it gives its approval, including requiring the Lessee to obtain the Council's consent to any agreements that the Lessee enters or proposes to enter into in relation to any alterations, additions or other works to the Leased Area.
- 8.2.4 The Lessee must carry out any approved works:
 - 8.2.4.1 in a proper and workmanlike manner;
 - 8.2.4.2 in accordance with the reasonable conditions and approvals imposed by the Council (as lessor under this Lease); and
 - 8.2.4.3 in accordance with all Statutory Requirements.
- 8.2.5 The Lessee will pay all of the Council's reasonable costs (including consultant's costs and legal costs) as a result of the Lessee's works.
- 8.2.6 Unless otherwise agreed in writing, any alteration or addition made pursuant to this clause will be the property of the Lessee.

8.3 Cleaning

The Lessee must:

- 8.3.1 keep the Leased Area (including any Improvements) clean and tidy and free from dirt, rubbish and graffiti; and
- 8.3.2 not cause any part of the surrounding Park Lands to be left untidy or in an unclean state or condition.

9. ENVIRONMENT

9.1 Environmental obligations

- 9.1.1 The Lessee must not do anything that causes Contamination or is likely to cause Contamination to the Park Lands (including the Leased Area) or the Environment in contravention of any Environmental Law.
- 9.1.2 The Lessee must perform at its cost any environmental remediation works required as a result of a breach by the Lessee of this clause.

9.2 Indemnity

Without limiting clause 15, the Lessee indemnifies the Council against any Claims for any Loss to the extent caused or contributed to by any breach of an Environmental Law by the Lessee.

9.3 **Termination**

This clause 9 survives termination or the expiration of this Lease.

10. **ASSIGNING, SUBLETTING AND CHARGING**

10.1 **Assignment**

The Lessee must not assign, transfer or otherwise deal with the Lessee's interest in the Leased Area under this Lease without the consent of Council.

10.2 **Request for Assignment**

If the Lessee requests that the Council consent to any assignment, transfer or other dealing, the Lessee must comply with Council's reasonable procedural requirements for dealing with the request.

10.3 **No release**

Where the Council grants consent to an assignment or transfer, the Lessee (i.e. the party assigning or transferring the Lease or rights under the Lease) will not be released or discharged from the current or future obligations under this Lease.

10.4 **Subletting or licensing**

10.4.1 The Lessee must not sublet or licence the Leased Area without the consent of Council.

10.4.2 The Lessee must provide Council with details of the proposed sublease or licence including a copy of the proposed agreement and details of the sublease or licence fees.

10.4.3 The Lessee is responsible for ensuring that any sublessee or licensee complies with this Lease and all of the terms of the approved sublease or licence agreement.

10.5 **Charging**

10.5.1 The Lessee must not charge the Lessee's interest in this Lease or the Improvements without the consent of Council.

10.5.2 If the Council consents to a charge then the Lessee must enter into a deed in a form required by the Council which ensures the charge is subject to the Council's rights under this Lease.

10.6 **Costs**

The Lessee must pay all costs reasonably incurred by the Council (including any legal fees) in relation to any dealing under this clause, including in considering whether or not to grant any consent to a request by the Lessee under this clause 10.

11. **COUNCIL'S OBLIGATIONS AND RIGHTS**

11.1 **Quiet enjoyment**

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

11.2 **Right to enter**

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

- 11.2.1 to see the state of repair of the Leased Area (including the Improvements and surrounding Park Lands);
- 11.2.2 to do repairs to the Park Lands or other works which cannot reasonably be done unless the Council enters the Leased Area; and
- 11.2.3 to do anything the Council must or may do under this Lease or must do under any law.

11.3 **Emergencies**

In an emergency the Council may (if reasonably necessary):

- 11.3.1 close the Leased Area; and
- 11.3.2 prevent or restrict access to the Park Lands.

11.4 **Works and restrictions**

11.4.1 Subject to clause 11.4.2, the Council may:

- 11.4.1.1 install, use, maintain, repair, alter, and temporarily interrupt Services;
- 11.4.1.2 carry out works on the Park Lands; and
- 11.4.1.3 temporarily close or restrict access to the Park Lands (including the Leased Area).

11.4.2 The Council must (except in cases of emergency):

- 11.4.2.1 provide reasonable notice to the Lessee of any proposed activities contemplated by clause 11.4.1;
- 11.4.2.2 occasion to the Lessee as little disturbance and damage as is reasonably practicable.

11.5 **Right to rectify**

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

11.6 **Park Lands Events**

- 11.6.1 The Lessee acknowledges and agrees that as the Leased Area is located in the Park Lands there may be public, major or special events held in nearby Park Lands which limit or restrict the use of and/or access to the Leased Area.
- 11.6.2 The Lessee acknowledges and agrees that the Lessee may not make a Claim for any Loss if any public, major or special event limits or restricts the Lessee's use of the Leased Area.

12. DAMAGE OR DESTRUCTION

12.1 Termination for destruction or damage

- 12.1.1 If any Improvements are destroyed or damaged so that they are unfit for the Permitted Use then within three (3) months after the damage or destruction occurs, the Lessee must give the Council a notice either:
- 12.1.1.1 terminating this Lease (on a date at least one (1) month after the Lessee gives notice); or
 - 12.1.1.2 advising the Council that the Lessee (at the Lessee's costs) intends to repair or replace the Improvements so that the Lessee can occupy and use the Leased Area.
- 12.1.2 If the Lessee gives a notice under clause 12.1.1.2 but does not carry out the intention within a reasonable time, the Council may give notice to the Lessee that the Council intends to end this Lease if the Lessee does not complete the required works within a reasonable time (having regard to the nature of the required work).
- 12.1.3 If the Lessee does not comply with the Council's notice under clause 12.1.2, the Council may terminate this Lease by giving the Lessee not less than one (1) month's notice without any Claim by the Lessee against the Council.
- 12.1.4 If the Lessee gives a notice under clause 12.1.1.1 or the Lease is terminated by the Council under clause 12.1.3, the Lessee must at its costs comply with the obligation under clause 13.2.
- 12.1.5 Without limiting any other term of this Lease, the Lessee will be liable to pay or reimburse the Council for all reasonable costs and expenses incurred by the Council as a result of the Lessee failing to undertake and complete any works including any reasonable costs the Council may incur to return the Leased Area to the condition required under clause 13.2.

13. RETURN OF LEASED AREA ON EXPIRY OR TERMINATION

13.1 Expiry

This Lease will end at midnight on the last day of the Term unless it is terminated earlier by the Council or the Lessee under any other provision of this Lease.

13.2 Handover of possession

- 13.2.1 Before this Lease ends, the Lessee will to Council's reasonable satisfaction:
- 13.2.1.1 no later than one (1) month before this Lease comes to an end, provide the Council with a written summary of all Improvements (and any other alterations and additions) made to the Leased Area by the Lessee;
 - 13.2.1.2 remove all of the Lessee's Equipment from the Leased Area;
 - 13.2.1.3 remove all Improvements (and any other alterations and additions) made by the Lessee and reinstate the Leased Area

to unimproved Park Lands setting (free of all built form and the Improvements); and

- 13.2.1.4 complete any other repairs which the Lessee is obliged to carry out under this Lease (if applicable).
- 13.2.2 If it is not practical for the Lessee to undertake and complete these requirements before the Lease comes to an end, then such works must be undertaken immediately after the Lease comes to an end, but in accordance with the reasonable requirements of the Council.
- 13.2.3 If at the time that possession of the Leased Area is given back to the Council, the Lessee has not complied with all or any of its obligations under this clause 13.2, the Lessee shall not be relieved of its obligation to comply with these requirements, or to compensate the Council for failure to do so, by reason of the fact that the Council has accepted or taken possession of the Leased Area.

13.3 **Holding over**

If with the Council's consent the Lessee continues to occupy the Leased Area after the end of this Lease, the Lessee does so as a monthly tenant which:

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

14. **BREACH**

14.1 **Payment obligations**

- 14.1.1 The Lessee must make payments due under this Lease:
 - 14.1.1.1 without demand (unless this Lease provides demand must be made);
 - 14.1.1.2 without set-off, counter-claim, withholding or deduction;
 - 14.1.1.3 to the Council or as the Council directs; and
 - 14.1.1.4 by direct payment.
- 14.1.2 If a payment is stated to be due on a particular Payment Date (such as the next Payment Date or the first Payment Date after an event) and there is no such Payment Date, the Lessee must make that payment within fourteen (14) days of demand.

14.2 **Set off**

The Council may, by notice to the Lessee, set off against any amount due and payable under this Lease by the Council to the Lessee, any amount due and payable by the Lessee to the Council under this Lease.

14.3 **Council's rights on breach**

- 14.3.1 If the Lessee is at any time in breach of any of its obligations under this Lease, and the Lessee fails to remedy that breach to the reasonable

satisfaction of the Council after being requested by the Council to do so, the Council may at any time come onto the Leased Area without notice and do all things necessary to remedy that breach.

- 14.3.2 The Lessee will be liable to pay or reimburse the Council for all reasonable costs and expenses incurred by the Council in that regard which the Council may recover from the Lessee as a debt due and payable within fourteen (14) days of demand.

14.4 **Default, breach and re-entry**

In the event:

- 14.4.1 the Rent or any moneys (or part of any moneys) payable under this Lease are unpaid for the space of fourteen days (14) after legal demand has been made;
- 14.4.2 the Lessee commits, permits or suffers to occur any breach, or default in the due and punctual observances and performance of any of the covenants, obligations and provisions of the Lease which remains unremedied for a period of 14 days after receipt of a demand to remedy the same (or in the case of repairs required to be effected by the Lessee, such repairs are not completed within a reasonable time);
- 14.4.3 of an Insolvency Event; or
- 14.4.4 the Leased Area is abandoned by the Lessee;

then despite any other clause of this Lease the Council at any time has the right to terminate this Lease, re-enter into and re-possess the Leased Area but without prejudice to any action or other remedy which the Council has or might or otherwise could have for arrears of Rent or any other amounts or breach of covenant or for damages as a result of any such event and the Council shall be freed and discharged from any action, suit, claim or demand by or obligation to the Lessee under or by virtue of the Lease.

14.5 **Rights of Council not limited**

The rights of the Council under this Lease and at law resulting from a breach of this Lease by the Lessee will not be excluded or limited in any way by reason of the Council having or exercising any powers under this clause 14.

14.6 **Landlord and Tenant Act**

In the case of a breach or default of this Lease where notice is required to be given pursuant to Section 10 of the *Landlord and Tenant Act 1936*, such notices will provide that the period of fourteen (14) days is the period within which the Lessee is to remedy any such breach or default if it is capable of remedy or to make reasonable compensation in money to the satisfaction of the Council.

14.7 Repudiation and damages

- 14.7.1 The Lessee acknowledges that the following obligations under this Lease are essential terms:
- 14.7.1.1 the obligation to pay Rent and any other moneys under this Lease;
 - 14.7.1.2 the obligations and prohibitions in relation to use of the Leased Premises;
 - 14.7.1.3 the obligations in relation to repair and maintenance;
 - 14.7.1.4 the obligations and restrictions in relation to the Improvements and any additions and alterations to the Leased Area; and
 - 14.7.1.5 the restriction on assignment, subletting and mortgaging.
- 14.7.2 If the Council accepts payment of Rent or any other moneys late or does not act or exercise any rights immediately or at all in respect of any breach of an essential term, that conduct on the part of the Council will not be deemed to amount to a waiver of the essential nature of that essential term.
- 14.7.3 If the Lessee breaches any essential term, that conduct on the part of the Lessee will be deemed to constitute a repudiation of this Lease and the Council may then at any time rescind this Lease by accepting that repudiation.
- 14.7.4 The Lessee agrees that if this Lease is terminated by the Council because of a breach by the Lessee of an essential term, or if the Lessee repudiates this Lease and the Council accepts that repudiation rescinding this Lease, the Lessee will be obliged to pay compensation to the Council including Rent and other moneys which the Council would otherwise have received under this Lease had the Lessee not breached an essential term or repudiated this Lease.
- 14.7.5 The rights of the Council under this clause 14.7 and any action taken by the Council do not exclude or limit any other rights or entitlements which the Council has under this Lease or at law in respect of any breach or repudiatory conduct on the part of the Lessee.

14.8 Interest on overdue amounts

If the Lessee does not pay an amount when it is due, it must pay interest on that amount on demand from when the amount becomes due until it is paid in full calculated on outstanding daily balances at the Default Rate.

15. INDEMNITY AND RELEASE

15.1 Risk

The Lessee occupies and uses the Leased Area at the Lessee's risk.

15.2 Indemnity

The Lessee is liable for and indemnifies the Council against all Claims for any Loss suffered directly or indirectly by the Council as a result of or in connection with the Lessee's use and occupation of the Leased Area including in connection with:

- 15.2.1 any neglect or default of the Lessee;
- 15.2.2 the overflow or leakage of water or any other harmful agent into or from the Leased Area;
- 15.2.3 any fire on or from the Leased Area; and
- 15.2.4 loss or damage to property or injury or death to any person caused by the negligence or default of the Lessee;

except to the extent caused or contributed to by the neglect or default of Council.

15.3 Release

The Lessee releases the Council from all Claims for any Loss occurring on the Leased Area except to the extent that they are caused by the Council's neglect or default.

15.4 Indemnities are independent

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

16. GOODS AND SERVICES TAX

16.1 Agreed consideration

If a GST applies to impose tax on the Agreed Consideration or any part of it or if the Council is liable to pay GST in connection with any supply under this Lease then:

- 16.1.1 the Agreed Consideration for that supply is exclusive of GST;
- 16.1.2 the Council may increase the Agreed Consideration or the relevant part of the Agreed Consideration by a percentage amount which is equal to the GST Rate; and
- 16.1.3 the Lessee shall pay the increased Agreed Consideration on the due date for payment by the Lessee of the Agreed Consideration.

16.2 Tax invoice

Where the Agreed Consideration is to be increased to account for GST under this clause 16, the Council will on or before the date on which the Agreed Consideration is payable, issue a tax invoice to the Lessee.

16.3 Penalties and interest

If the Lessee does not comply with its obligations under this Lease or with its obligations under GST Legislation in connection with this Lease and as a result the Council becomes liable for penalties or interest for late payment of GST, then the Lessee must pay the Council on demand an amount equal to the amount of the penalties and interest.

17. DISPUTES RESOLUTION

17.1 Dispute

A party to a Dispute must comply with this clause before starting arbitration or court proceedings (except proceedings for interlocutory relief).

17.2 Notice of Dispute

A party to a Dispute must give the other parties to the Dispute notice setting out details of the Dispute.

17.3 Effort to resolve

For twenty (20) Business Days after the notice in clause 17.2, each party to the Dispute must use reasonable efforts to resolve the Dispute.

17.4 Mediator

17.4.1 If the parties cannot resolve the Dispute under clause 17.3 within that period, they must refer the Dispute to a mediator.

17.4.2 If, within a further twenty (20) Business Days, the parties to the Dispute do not agree on a mediator, a party to the Dispute may ask the chairman of the Resolving Body to appoint a mediator.

17.4.3 The mediator assists in negotiating a resolution of the Dispute. A mediator may not bind a party unless the party agrees in writing.

17.4.4 The mediation ends if the Dispute is not resolved within twenty (20) Business Days after the mediator's appointment.

17.5 Confidentiality

Each party:

17.5.1 must keep confidential any information or documents disclosed in the dispute resolution process; and

17.5.2 may use that information or those documents only to try to resolve the Dispute.

17.6 Cost of dispute

Each party to a Dispute must pay its own costs of complying with this clause. The parties to the Dispute must pay equally the costs of the mediator and any third party reports and enquiries requested by the mediator.

17.7 Breach of dispute clause

If a party to a Dispute breaches this clause, the other parties to the Dispute do not have to comply with this clause in relation to the Dispute.

18. GENERAL

18.1 Costs

The Lessee must pay or reimburse to the Council:

- 18.1.1 if the Lessee has requested that this Lease be registered and this Lease is capable of registration, all government fees for registration of this Lease. If a lease plan is required to be prepared and registered before this Lease can be registered, then the Lessee must arrange and pay for the preparation and registration of that lease plan;
- 18.1.2 all of Council's legal and other costs incurred in respect to the negotiation, preparation and execution of this Lease; and
- 18.1.3 all reasonable legal and other costs and expenses incurred by the Council in consequence of any actual or threatened breach by the Lessee or in exercising or enforcing (or attempting to do so) any rights or remedies of the Council under this Lease or at law or otherwise arising in consequence of any actual or threatened breach by the Lessee.

18.2 Waiver

If the Council accepts or waives any breach by the Lessee, that acceptance or waiver cannot be taken as an acceptance or waiver of any future breach of the same obligation or of any other obligation under this Lease.

18.3 Notice

- 18.3.1 Without excluding any other form of service, any notice required to be given or served will be sufficiently given or served as follows:
 - 18.3.1.1 in the case of the Lessee, if posted by pre-paid post or delivered to the last known address of the Lessee; and
 - 18.3.1.2 in the case of the Council, if posted by pre-paid post to the Council at its principal place of business in South Australia (which is taken to be the address stated in this Lease unless the Lessee is or ought reasonably be aware that that is not the Council's principal place of business at the relevant time).
- 18.3.2 Notice served by pre-paid post will be deemed to have been given or served three (3) Business Days after posting.
- 18.3.3 Any notice may be signed on a party's behalf by its attorney, director, secretary, officer, solicitor or authorised agent.

18.4 Severance

If any part of this Lease is found to be invalid, void or unenforceable, then that part will be severed from this Lease and the remainder of this Lease will continue to apply.

18.5 Special conditions

Any Special Conditions will apply to this Lease and in the event of any inconsistency with the terms and conditions in the body of this Lease, then those Special Conditions will prevail.

18.6 Entire agreement

The Council and the Lessee acknowledge and agree that this Lease contains and represents the entire agreement reached between them with regard to the Leased Area and that no promises, representations or undertakings, other than those contained in this Lease, were made or given or relied upon.

18.7 Resumption

If the Council receives notice of resumption or acquisition of the Leased Area or any land affecting the Leased Area from or by any Statutory Authority or any body or authority of such Statutory Authority, then the Council may terminate this Lease by giving not less than three (3) months written notice to the Lessee. When such termination takes effect, the rights and obligations of the Council and the Lessee hereunder will come to an end but if any breach by either party still exists at that time then the rights of the other party with regard to that existing breach will continue.

EXECUTED AS AN AGREEMENT

COUNCIL

Signed by an Authorised Officer for **THE CORPORATION OF THE CITY OF ADELAIDE** in the presence of:

.....
Signature of witness

.....
Signature of Authorised Officer

.....
Name of witness (print)

.....
Name of Authorised Officer (print)

LESSEE

[#insert form of execution]

SCHEDULE

ITEM 1 Leased Area	Portion of the Park Lands being the area outlined on the Plan
ITEM 2 Initial Term	[#]years commencing [#insert date] (Commencement Date) and expiring at midnight [#insert date]
ITEM 3 Rent	Two thousand dollars (\$2,000.00) per annum (exclusive of GST) (subject to special condition 1)
ITEM 4A Review Dates	[#insert date]
ITEM 4B Review Dates	[#insert date]
ITEM 4C Review Dates	[#insert date]
ITEM 5 Permitted Use	[#]
ITEM 6 Public Risk Insurance	\$20,000,000.00
ITEM 7 Special Conditions	

ANNEXURE A
LEASED AREA