



# CITY OF ADELAIDE

## **PARK LANDS LEASE AGREEMENT** (Rymill 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.



**Concept Plans** means those plans attached at Annexure B.

**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.

**Council's Equipment** means any fixtures and fittings, plant, equipment, Services, chattels and other goods installed or situated in or on the Leased Premises by the Council and made available for use by the Lessee.

**Council's Existing Improvements** means all built form and improvements (including the exterior and interior of all buildings) and all other conveniences, Services, amenities and appurtenances of, in or to the Council's Existing Improvements forming part of the Leased Premises as at the Commencement Date.

**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 Premises 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 Premises 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 Premises 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 Premises 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 Premises 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 premises.

**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.

**Development Approvals** means all consents, authorisations and approvals required by law to be obtained for the execution of the Proposed Redevelopment, including all necessary consents and approvals under the provisions of the *Planning, Development and Infrastructure Act (SA) 2016*.

**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.

**Guarantor** means the person(s) named in Item #.

**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 improvements (including the Council's Existing Improvements and the Lessee's Improvements (as the case may be)) and all other conveniences, Services, amenities and appurtenances of, in or to the Improvements which are made to the Leased Area.

**Initial Term** means the initial term of this Lease commencing on the Commencement Date and described in Item 2.

**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 or 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 Premises** means that portion of the Park Lands described in Item 1 including the Council's Existing Improvements, Council's Equipment (if any) and 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 Premises by the Lessee (with or without the consent of the Council).

**Lessee's Improvements** means any additions, alternations and other improvements made by the Lessee to the Leased Premises from time to time as allowed or otherwise approved under this Lease.

**Loss** means any loss, damage, death or injury.

**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 6.

**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).

**Proposed Redevelopment** means the redevelopment works to be undertaken to the Park Lands (including the Leased Premises) by the Lessee in accordance with the Concept Plans.

**Renewal Term** means the term(s) (if any) of renewal or extension granted under this Lease and if the Lessee has two or more rights of renewal under this Lease then the term First Renewal Term means the first period of renewal and the term Second Renewal Term means the second period of renewal.

**Rent** means the rent described in Item 4.

**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 5A, 5B and 5C.

**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 Premises supplied by any authority, the Council or any other person the Council authorises.

**Special Conditions** means the special conditions (if any) in Item 10.

**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 (including any requirement of Council in its separate capacity as a Statutory Authority).

**Term** means the Initial Term, the Renewal Term (if any) and any period during which the Lessee holds over or remains in occupation of the Leased Premises.

**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.

## 1.2 Interpretation

Unless the contrary intention appears:

- 1.2.1 headings are for convenience only and do not affect interpretation;
- 1.2.2 the singular includes the plural and vice-versa;
- 1.2.3 a reference to an individual or person include a corporation, partnership, joint venture, authority, trust, state or government and vice versa;
- 1.2.4 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;
- 1.2.5 a reference to any document (including this Lease) is to that document as varied, novated, ratified or replaced from time to time;
- 1.2.6 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;
- 1.2.7 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;
- 1.2.8 "including" and similar expressions are not and must not be treated as words of limitation;
- 1.2.9 the background forms part of this Lease and is correct; and
- 1.2.10 a reference to an Item is a reference to an Item in the Schedule.

## 2. GRANT OF LEASE

The Council grants and the Lessee accepts a lease of the Leased Premises 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 5A 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 5B 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 5C (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 Premises.

#### **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 Premises, 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 Premises; or

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

## 6. USE OF LEASED AREA

### 6.1 Permitted Use

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

6.1.2 Without limiting clause 6.1.1, the Lessee must ensure the Premises is open and trades during the following times [Item 6] (or such other times as approved by Council).

### 6.2 Park Lands

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 Premises (being part of the Park Lands).

### 6.3 Offensive activities

The Lessee must:

6.3.1 not carry on any offensive or dangerous activities on or from the Leased Premises 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 Premises 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 which results from any misuse or abuse of the Services by the Lessee.

### 6.5 Statutory requirements

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

## 6.6 **Liquor licence**

The Lessee must not make an application for a liquor licence issued under the *Liquor Licensing Act 1997* (“**Licensing Act**”) without the Council’s consent (in both its capacity as a statutory authority and lessor under this Lease) and the Lessee acknowledges that any application will be subject to the Lessor’s liquor licensing policy and that if a licence is granted:

- 6.6.1 the Lessee maintain any licence or such other necessary licences, permits, approvals and consents and the Lessee must not do, omit or cause to be done or omitted any act, matter or thing as a result of which any such licence issued in respect of the Leased Premises to be suspended, forfeited or removed;
- 6.6.2 the Lessee must not apply to the licensing authority to decrease or restrict the hours of trading permitted under the licence;
- 6.6.3 the Lessee must (at the cost and expense of the Lessee) at all times during the Term comply with, observe, carry out and perform the requirements of the Licensing Act and each and every order, direction and requirement relating to the Leased Premises of the licensing authority or of any inspector, officer or person appointed by the licensing authority;
- 6.6.4 the Lessee must not without the Council’s approval remove or apply to transfer any licence issued under the Licensing Act in respect of the Leased Premises to any other premises during the Term;
- 6.6.5 if the Lessee or the manager, licensee of any employee of the Lessee shall receive or be served with any summons, complaint or any other legal process or any notice of communication from any person or authority relating to the Leased Premises, the Lessee must immediately inform the Council of all necessary particulars and surrounding circumstances and events;
- 6.6.6 following the termination or expiry of this Lease the Lessee shall transfer to the Council or its nominee at the cost of the Lessee the licence and all other such licences, permits, approvals and consents.

## 6.7 **Signs**

The Lessee must not place any signs or advertisements in or on the Leased Premises (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 or is required for the Proposed Redevelopment.
- 6.8.2 The Lessee must not without the consent of Council install or bring onto the Leased Premises:

- 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 Premises;

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

## 6.9 Fire precautions

The Lessee must comply with:

- 6.9.1 all reasonable requirements of the Council with regard to fire safety systems and procedures; and
- 6.9.2 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 Premises.

## 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 Premises 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 Premises.

# 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 7 (or any other amount the Council reasonably requires) for each claim;
- 7.1.2 all insurance in respect of the Lessee's Equipment;
- 7.1.3 insurance in respect of any Improvements including a policy in respect of any breakage and damage to plate and other glass; 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 be in the name of the Lessee and 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 Premises; 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:

8.1.1.1 keep and maintain the Leased Premises in good condition and repair and promptly rectify any damage to the Leased Premises; and

8.1.1.2 keep, maintain, repair, and replace any Improvements and the Lessee's Equipment in good repair and condition (including undertaking all structural and capital maintenance, repair and replacement) to ensure any Improvements and the Lessee's Equipment are kept to a standard reasonably required by the Council (fair wear and tear excepted); and

8.1.1.3 undertake any upgrade to Services or improvement to the Leased Premises required by the Lessee as a result of the Lessee's use or occupation of the Leased Premises.

8.1.2 Not less frequently than annually the Council and the Lessee must meet to review the state and condition of the Leased Premises (including any Improvements) and the surrounding pedestrian and landscaped areas to identify any works for repairs or replacements of which either party is aware that are required for the next year.

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 Premises 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 19 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 Premises 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 Premises.
- 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 **Proposed Redevelopment**

- 8.3.1 Subject to clause 8.3.3, the Council consents to the Proposed Redevelopment being undertaken by the Lessee in accordance with this Lease (and this clause 8.3.1 shall be in satisfaction of clause 8.2 of this Lease).
- 8.3.2 The Proposed Redevelopment shall be undertaken by the Lessee at its own cost and expense but subject to first obtaining all necessary Development Approvals:
- 8.3.2.1 in a good and workmanlike manner; and
  - 8.3.2.2 substantially in accordance with the Concept Plans (subject to clause 8.3.3 below) and otherwise Council's reasonable directions and requirements.
- 8.3.3 Without limiting any other provision of this Lease, the parties acknowledge and agree that:
- 8.3.3.1 the Lessee may only add to, amend, vary, remove from or modify the Concept Plans ("**Concept Plans Variation**") with the consent of the Council;
  - 8.3.3.2 the Council will not unreasonably withhold consent to a Concept Plans Variation provided that any Concept Plans Variation is not a Material Variation;
  - 8.3.3.3 if the Concept Plan Variation is a Material Variation then the Council may withhold consent in its discretion;

- 8.3.3.4 the Council will not be acting unreasonably if Council considers it necessary to undertake further public or community consultation regarding the Concept Plans Variation; and
  - 8.3.3.5 all improvements, fixtures and fittings constructed on the Leased Area and/or Licence Area as part of the Proposed Redevelopment shall remain the property of the Lessee and will not form part of the Leased Area.
- 8.3.4 In this clause 8.3, “**Material Variation**” means a variation which would result in:
- 8.3.4.1 a material adverse change in the external appearance or style of the Proposed Redevelopment measured against the Concept Plans;
  - 8.3.4.2 a material increase in the area of Park Lands to be occupied by the Proposed Redevelopment; or
  - 8.3.4.3 a material alteration to any works Council would need to undertake to nearby Park Lands planned or scheduled to accommodate the Proposed Redevelopment.
- 8.3.5 The Lessee must use all reasonable endeavours to ensure the Proposed Redevelopment is substantially completed, within twelve (12) months from the Commencement Date, and kiosk is operational.
- 8.3.6 If the Lessee has not fully completed the Proposed Development and the kiosk is not operational to Council’s satisfaction (acting reasonably) within eighteen (18) months from the Commencement Date, the Lessee acknowledges and agrees, without limiting any of the term of this Lease, the Lessee will be in breach and will no longer be entitled to the Renewal Terms.

## 8.4 **Cleaning**

The Lessee must:

- 8.4.1 keep the Leased Premises (including any Improvements) clean and tidy and free from dirt, rubbish and graffiti; and
- 8.4.2 not cause any part of the 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 Leased Premises 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 16, 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 Premises 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 Premises 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, the Lessee's Equipment 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 Premises 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 Premises after giving the Lessee reasonable notice:

- 11.2.1 to see the state of repair of the Leased Premises (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 Premises; 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:

- 11.3.1 if reasonably necessary, close the Leased Premises; and
- 11.3.2 prevent or restrict access to the Park Lands as reasonably necessary.

### **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 Premises).

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 the Leased Premises is located in an area of the Park Lands that is used regularly for public, major or special events limiting or restricting the use of and/or access to the Leased Premises.

11.6.2 Subject to clause 11.6.3, where the event to be held in the Park Lands is proposed and managed by Council (through Council's events strategy) (**Council Event**) the Council must:

11.6.2.1 where:

(a) the Council Event is scheduled in more than twelve (12) months provide written notice of the Council Event within eleven (11) months of event commencing; or

(b) the Council Event is scheduled in less than twelve (12) months provide written notice of the Council Event as soon as reasonably practicable after the details of the Council Event are sufficiently known;

11.6.2.2 use all reasonable endeavours to occasion to the Lessee as little disturbance as is practicable having regard to the nature and scale of the Council Event including (where possible) by;

(a) minimizing event fence intrusion;

(b) preserving line of sight of kiosk from Bartels Road; and

(c) maintaining access for deliveries from Bartels Road; and

11.6.2.3 rectify as soon as reasonably practicable any damage to the Leased Premises caused by the Council Event.

11.6.3 The Lessee acknowledges and agrees that this clause does not apply and impose any obligations on the Council or confer any rights upon the Lessee if any public, major or special event in or affecting the Park Lands and the Leased Premises is a declared event under the *South Australian Motor Sport Act 1984* or *Major Events Act 2013*.

## 12. DAMAGE OR DESTRUCTION

### 12.1 Termination for destruction or damage

12.1.1 If any Improvements are destroyed or damaged so that the Leased Premises is unfit for the Lessee's 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 Premises.

- 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 14.2.
- 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 Premises to the condition required under clause 14.2.

### 13. RENEWAL

#### 13.1 First right of renewal

- 13.1.1 If a first right of renewal is specified in Item 3 and the Lessee wishes to exercise that right of renewal, then the Lessee must give a written notice to the Council not less than six (6) months and not more than twelve (12) months before the expiry of the Initial Term stating it wishes to renew this Lease for the period specified in Item 3 ("**First Renewal Term**").
- 13.1.2 If such notice is given, the Council must at the Lessee's cost renew this Lease for the First Renewal Term on the terms in this Lease (except this subclause) commencing immediately after the Initial Term expires.

#### 13.2 Second right of renewal

- 13.2.1 If a second right of renewal is specified in Item 3 and the Lessee wishes to exercise that right of renewal, then the Lessee must give a written notice to the Council not less than six (6) months and not more than twelve (12) months before the expiry of the First Renewal Term stating it wishes to renew this Lease for the period specified in Item 3 ("**Second Renewal Term**").
- 13.2.2 If such notice is given, the Council must at the Lessee's cost renew this Lease for the Second Renewal Term on the terms in this Lease (except this subclause) commencing immediately after the First Renewal Term expires.

#### 13.3 No entitlement

The Lessee is not entitled to renew this Lease if:

- 13.3.1 the Lessee has been in breach of this Lease at any time before giving notice of the Lessee's desire to exercise the right of renewal ("**notice**");
- 13.3.2 the Lessee is in breach of this Lease at the time of giving that notice; or

- 13.3.3 the Lessee is in breach or commits any breach under this Lease after giving that notice but before commencement Renewal Term.

## 14. RETURN OF LEASED AREA ON EXPIRY OR TERMINATION

### 14.1 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.

### 14.2 Handover of possession

- 14.2.1 Before this Lease ends, the Lessee will (if required to do so by the Council in writing) to Council's reasonable satisfaction:

14.2.1.1 no later than one (1) month before this Lease comes to an end, provide the Council with a written summary of all alterations, additions (including any Improvements) made to the Leased Premises by the Lessee;

14.2.1.2 remove all of the Lessee's Equipment from the Leased Premises and repair any damage caused by such removal;

14.2.1.3 complete any repairs which the Lessee is obliged to carry out under this Lease (if applicable); and

14.2.1.4 terminate all Services.

- 14.2.2 Subject to clause 14.2.3, if the Council and the Lessee agree by deed made in writing and executed by each party, the Lessee must remove the Improvements and any other alterations and additions made by the Lessee to the Leased Area and reinstate the Leased Premises to unimproved Park Lands setting (free of all built form and Improvements).

- 14.2.3 The Lessee must remove the Improvements and any other alterations and additions made by the Lessee and reinstate the Leased Premises to unimproved Park Lands setting (free of all built form and the Improvements) if this Lease is terminated under clause 12.

- 14.2.4 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.

- 14.2.5 If at the time that possession of the Leased Premises is given back to the Council, the Lessee has not complied with all or any of its obligations under this clause 14.2, 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 Premises.

### 14.3 Holding over

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

- 14.3.1 either party may terminate on one (1) month's notice given at any time; and

14.3.2 is on the same terms as this Lease.

## 15. **BREACH**

### 15.1 **Payment obligations**

15.1.1 The Lessee must make payments due under this Lease:

15.1.1.1 without demand (unless this Lease provides demand must be made);

15.1.1.2 without set-off, counter-claim, withholding or deduction; and

15.1.1.3 to the Council or as the Council directs; and

15.1.1.4 by direct debit or such other means as the Council directs.

15.1.2 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.

### 15.2 **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.

### 15.3 **Council's rights on breach**

15.3.1 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.

15.3.2 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.

### 15.4 **Default, breach and re-entry**

In the event:

15.4.1 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;

15.4.2 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);

15.4.3 of an Insolvency Event; or

15.4.4 the Leased Premises 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 Premises 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.

#### 15.5 **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 15.

#### 15.6 **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.

#### 15.7 **Repudiation and damages**

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

15.7.1.1 the obligation to pay Rent and any other moneys under this Lease;

15.7.1.2 the obligations and prohibitions in relation to use of the Leased Premises;

15.7.1.3 the obligations in relation to repair and maintenance;

15.7.1.4 the obligations and restrictions in relation to the Improvements and any additions and alterations to the Leased Premises; and

15.7.1.5 the restriction on assignment, subletting, mortgaging and licensing.

15.7.2 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.

15.7.3 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.

15.7.4 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.

15.7.5 The rights of the Council under this clause 15.7 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.

#### 15.8 **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.

### 16. **INDEMNITY AND RELEASE**

#### 16.1 **Risk**

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

#### 16.2 **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:

16.2.1 any wilful or negligent act or omission of the Lessee;

16.2.2 the overflow or leakage of water or any other harmful agent into or from the Leased Area;

16.2.3 any fire on or from the Leased Premises;

16.2.4 loss or damage to property or injury or death to any person caused by the negligence or default of the Lessee; and

16.2.5 a breach of this Lease by the Lessee;

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

#### 16.3 **Release**

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

#### 16.4 **Indemnities are independent**

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

### 17. **GOODS AND SERVICES TAX**

#### 17.1 **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:



- 17.1.1 the Agreed Consideration for that supply is exclusive of GST;
- 17.1.2 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
- 17.1.3 the Lessee shall pay the increased Agreed Consideration on the due date for payment by the Lessee of the Agreed Consideration.

## 17.2 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.

## 17.3 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.

# 18. REDEVELOPMENT

## 18.1 Termination of Lease

If as part of any community redevelopment or community project to be conducted by or on behalf of the Council, the Council wishes (acting reasonably and in good faith) to redevelop any part of the Park Lands that includes the demolition of the Improvements on the Leased Premises, then the Council will be entitled to terminate this Lease subject to the following provisions:

- 18.1.1 the Council must provide the Lessee with full details of the proposed demolition sufficient to indicate a genuine proposal to carry out that demolition within a reasonably practical time after this Lease is to be terminated;
- 18.1.2 the Council may at any time after providing the Lessee with the information specified in clause 18.1.1, give the Lessee a written notice of termination of this Lease (**Termination Notice**) specifying the date on which this Lease is to come to an end being a date not less than twenty-four (24) months after the Termination Notice is given;
- 18.1.3 this Lease will, unless terminated earlier by the Lessee under clause 18.1.4, come to an end at midnight on the day specified in the Termination Notice;
- 18.1.4 at any time after receiving a Termination Notice under clause 18.1.12, the Lessee may terminate this Lease by giving not less than seven (7) days written notice to the Council; and
- 18.1.5 when this Lease is terminated (whether by the Council under clause 18.1.12 or by the Lessee under clause 18.1.4), the rights and obligations of the Council and the Lessee will come to an end but if any breach by either party still exists at that time then the rights of the other party with regard to that existing breach will continue.

## 18.2 Compensation

The Lessee will not be entitled to any claim for compensation arising from the termination of this Lease under this clause 18.

## 19. DISPUTES RESOLUTION

### 19.1 Dispute

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

### 19.2 Notice of Dispute

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

### 19.3 Effort to resolve

For twenty (20) Business Days after the notice in clause 19.2, each party to the Dispute must use reasonable efforts to resolve the Dispute.

### 19.4 Mediator

19.4.1 If the parties cannot resolve the Dispute under clause 19.3 within that period, they must refer the Dispute to a mediator.

19.4.2 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.

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

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

### 19.5 Confidentiality

Each party:

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

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

### 19.6 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.

### 19.7 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.

## 20. GENERAL

### 20.1 Costs

20.1.1 The Lessee must pay or reimburse to the Council:

20.1.1.1 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;

20.1.1.2 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.

20.1.2 Each party shall be responsible for their own legal costs in respect of the negotiation and execution of this Lease.

### 20.2 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.

### 20.3 Notice

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

20.3.1.1 in the case of the Lessee, if posted by pre-paid post or delivered to the last known address of the Lessee; and

20.3.1.2 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).

20.3.2 Notice served by pre-paid post will be deemed to have been given or served three (3) Business Days after posting.

20.3.3 Any notice may be signed on a party's behalf by its attorney, director, secretary, officer, solicitor or authorised agent.

### 20.4 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.

## 20.5 **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.

## 20.6 **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.

## 20.7 **Resumption**

If the Council receives notice of resumption or acquisition of the Leased Premises or any land affecting the Leased Premises 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.

# 21. **BANK GUARANTEE**

## 21.1 **Issue of Bank Guarantee**

If and whenever requested to do so by the Council, the Lessee must arrange for the immediate issue of the Bank Guarantee and provide it to Council.

## 21.2 **Amount of Bank Guarantee**

If the amount of the Bank Guarantee is calculated by reference to monthly instalments of Rent then the Lessee must, if required by the Council, immediately following any review or adjustment of the Rent, provide a replacement bank guarantee in an amount equal to the total of the monthly amounts payable during the specified period (and where appropriate, reasonably estimated by the Council).

## 21.3 **Claim on Bank Guarantee**

21.3.1 The Lessee must provide the Bank Guarantee and any replacement of it as security for the payment of all moneys from time to time payable by the Lessee pursuant to this Lease. If the Lessee is in default under this Lease as provided in clause 15, the Council may claim under the Bank Guarantee for all moneys then and subsequently due and payable under this Lease and all loss, damage, costs and expenses incurred by the Council as a consequence of the default.

21.3.2 The Council will be entitled to claim and the bank will make payment under the Bank Guarantee without reference to the Lessee and notwithstanding any objection, claim or direction by the Lessee to the contrary.

## 21.4 **Deficiency after claim**

Upon each occasion when the Council has recourse to the Bank Guarantee, the Council will be entitled, by notice in writing to the Lessee, to require the Lessee to reinstate the amount of the Bank Guarantee or provide an additional bank guarantee

in relation to the amount of the claim (any any previous claims) made by the Council (**Deficiency**). Within seven (7) days of receipt by the Lessee of each notice, the Lessee must:

21.4.1 provide evidence to the Council of the reinstatement of the existing Bank Guarantee to its full amount prior to the occurrence of the Deficiency; or

21.4.2 provide to the Council an additional bank guarantee equal to the amount of the Deficiency and the terms of this clause 21 shall apply mutatis mutandis in relation to that additional bank guarantee.

#### 21.5 **No derogation**

The rights of the Council under this clause 21 shall not derogate from the other rights and remedies available to the Council under this Lease or at law or in equity in relation to any default of the Lessee.

#### 21.6 **Release of Bank Guarantee**

Upon the expiration of the Term and the vacation of the Premises by the Lessee in accordance with the terms of this Lease, provided the Lessee is not then in default, the Council must release the Bank Guarantee to the Lessee.

#### 21.7 **Assignment of Lease**

If the benefit of the Lease is transferred or assigned by the Council to any person, the benefit of the Bank Guarantee extends to and is to be taken to be assigned to the transferee or assignee. The Lessee must do all things necessary to give effect to that assignment including without limitation, providing a replacement Bank Guarantee in favour of the transferee or assignee if requested to do so by the Council.

#### 21.8 **No limit on claims**

The Council is entitled to recover from the Lessee the Rent and all other moneys due and owing under this Lease and damages arising out of the Lessee's breach or breaches without being limited to the amount of the Bank Guarantee.

### 22. **GUARANTEE**

#### 22.1 **Guarantee and indemnity**

In consideration of the Council executing this Lease at the request of the Guarantor (which request is testified by the Guarantor's execution of this Lease) the Guarantor:

22.1.1 guarantees to the Council the due and punctual payment to the Council of all moneys which become due and payable to the Council by the Lessee pursuant to this Lease and the due and punctual observance and performance of all the Lessee's obligations in this Lease; and

22.1.2 as a separate and independent liability, indemnifies the Council against all loss, damage, costs and expenses suffered or incurred by the Council by reason of any breach of this Lease by the Lessee.

#### 22.2 **Guarantor's covenants**

The Guarantor further agrees that:

- 22.2.1 this guarantee and indemnity continues throughout the Term and after the Term expires;
- 22.2.2 any payment made to the Council and later avoided by any statutory provision or discounted, refunded or reduced by any subsequent proceedings does not discharge the Guarantor's liability and, in any such event, the Council, the Lessee and the Guarantor must be restored to the rights which each would have had if the payment had not been made;
- 22.2.3 the Council may proceed against the Guarantor (or any one or more of them) concurrently, before or instead of proceeding against the Lessee without affecting the liability of the Guarantor or the Lessee;
- 22.2.4 the liability of the Guarantor is not prejudiced by the granting of time, credit or any indulgence or concession to the Lessee or by any compounding, compromise, release, absolute or partial discharge (whether by operation of law or otherwise), abandonment, waiver, variation, novation, relinquishment or renewal of any contractual rights, duties, guarantees or indemnities by the Lessee, or by any omission or neglect or by any other dealing, matter or thing which, but for this provision, could or might operate to prejudice this guarantee and indemnity. This guarantee and indemnity is absolute and unconditional in all circumstances;
- 22.2.5 this guarantee and indemnity is not affected by any laches, acts, omissions or mistakes by the Council;
- 22.2.6 until the Lessee has fully performed and observed the Lessee's covenants in this Lease and until the Council has received in full all moneys due from the Lessee under this Lease, the Guarantor is bound by this guarantee and indemnity;
- 22.2.7 this guarantee and indemnity continues to bind the Guarantor notwithstanding:
  - 22.2.7.1 the death, bankruptcy, insolvency or liquidation (as the case may be) of the Lessee or the Guarantor or any one or more of them;
  - 22.2.7.2 any change in the constitution of the Council, the Lessee or the Guarantor;
  - 22.2.7.3 the happening of any thing, which under the law relating to sureties would, but for this provision, release the Guarantor from this guarantee and indemnity or discharge this guarantee and indemnity;
  - 22.2.7.4 any part of this Lease being severed;
  - 22.2.7.5 any renewal or extension of the Term or any variation to the terms of this Lease;
  - 22.2.7.6 any security taken by the Council being or becoming void or defective or any loss or impairment of such security;
  - 22.2.7.7 any assignment of this Lease by the Lessee or any sub-letting or parting with possession of or control of the Premises with or without the Council's consent; or
  - 22.2.7.8 any surrender of this Lease by operation of law;

- 22.2.8 if any part of this Lease is severed under clause 9 then the Guarantor is not entitled to rely on or claim the benefit of any such severance;
- 22.2.9 this guarantee and indemnity is a continuing guarantee and indemnity and is not wholly or partially discharged by the payment of any moneys or the performance of any of the Lessee's covenants or any other thing;
- 22.2.10 the liability of the Guarantor is not affected by any collateral rights or obligations which may exist between the Guarantor and the Council or between the Guarantor and the Lessee;
- 22.2.11 the Guarantor waives in favour of the Council all rights of the Guarantor against the Lessee; and
- 22.2.12 the Council may assign the rights and benefits of the Council under this guarantee and indemnity either absolutely or by way of security without the Lessee's or the Guarantor's consent and this guarantee and indemnity is fully enforceable by the assignee.

**22.3 Liability not affected**

The Guarantor's liability under this guarantee and indemnity is not affected by:

- 22.3.1 the fact that any other person who was intended to execute this document or otherwise to become a co-surety has not done so or has not done so effectively; or
- 22.3.2 the discharge under statute or any principle of law or equity of any person who is a co-surety.

**22.4 Extended operation of guarantee and indemnity**

A reference in this clause to 'this Lease' is a reference to any tenancy or other right whether legal, equitable or otherwise under which the Lessee occupies or is entitled to occupy the Premises including a tenancy for a fixed term, a periodic tenancy, a tenancy at will or a tenancy at sufferance.

**Signed** by **###[guarantor]** in the presence of:

.....  
Signature of witness .....  
###[guarantor]

.....  
Name of witness (print)





## SCHEDULE

<p><b>ITEM 1</b> <b>Leased Area</b></p>	<p>Portion of the Park Lands being the area outlined in Red on the Plan [Annexure A]</p>
<p><b>ITEM 2</b> <b>Initial Term</b></p>	<p>Seven (7) years commencing [insert date] (<b>Commencement Date</b>) and expiring at midnight [insert date].</p>
<p><b>ITEM 3</b> <b>Renewals</b></p>	<p>Two (2) rights of renewal each for a further term of seven (7) years commencing [insert date] and expiring at midnight [insert date].</p>
<p><b>ITEM 4</b> <b>Rent</b></p>	<p>Subject to Independent Market Review [TBD]</p>
<p><b>ITEM 5A</b> <b>Review Dates</b> <b>Predetermined</b></p>	<p>Subject to Independent Market Review [TBD]</p>
<p><b>ITEM 5B</b> <b>Review Dates</b> <b>CPI Review</b></p>	<p>Subject to Independent Market Review [TBD]</p>
<p><b>ITEM 5C</b> <b>Review Dates</b> <b>Market Rent</b></p>	<p>Subject to Independent Market Review [TBD]</p>
<p><b>ITEM 6</b> <b>Permitted Use</b></p>	<p>Kiosk, café/restaurant, event/function space with the following trading hours:</p> <ul style="list-style-type: none"> <li>• Mondays 6:30 – 23:00;</li> <li>• Tuesdays 6:30 – 23:00;</li> <li>• Wednesdays 6:30 – 23:00;</li> <li>• Thursdays 6:30 – 23:00;</li> <li>• Fridays 6:30 – 2:00am (Saturday morning)*;</li> <li>• Saturdays 6:30 – 2:00am (Sunday morning)*; and</li> <li>• Sundays 6:30 – 23:00* (except when a public holiday were to fall on a Monday, the Sunday closing times will be extended to 2am on the Monday morning).</li> </ul>

	<i>* kiosk trade will remain open and accessible for all Park Land users on Friday, Saturday and Sunday (and public holidays) between 8.00am and 2.00pm. The Council acknowledges and agrees that kiosk trade past 2.00pm may be interrupted by private functions booked in advance.</i>
<b>ITEM 7 Public Risk Insurance</b>	\$20,000,000.00
<b>ITEM 8 Bank Guarantee</b>	Five thousand dollars (\$5,000.00)
<b>ITEM 9 Guarantor(s)</b>	<b>[# insert name]</b>
<b>ITEM 10 Special Conditions</b>	<ol style="list-style-type: none"> <li><b>1. Rent payments</b>  The Lessee shall not be required to make any payments on account of Rent for the first twelve (12) months of the Term of the Lease (from 1 January 2024 to 31 December 2024) provided the Lessee must continue to pay all other Yearly Amounts during this time.</li> <li><b>2. Car park permits</b>  Two (2) Park Lands parking permits will be supplied to Lessee with year round access provided to Rymill Park Car Park (access via Dequetteville Terrace).</li> <li><b>3. Row boat storage and lake access</b>  Lessee will benefit from exclusive use of row boats and they are to remain stored in the kiosk/or on the lake with access to the lake provided from (Attachment XX)</li> <li><b>4. Lessee small events and Park Lands Activation</b>  The Lessee will submit to Council any applications for small events and Park Land activations to be held by the Lessee on the lawn to the south of the kiosk when required. Approvals will be managed by Council's small event team.</li> <li><b>5. Adjacent trees</b>  All trees remain the responsibility of Council and are to be maintained by Council. Lessee is not to impact, interfere, etc, with any tree or part thereof.</li> </ol>

The Lessee will report any damage caused to the trees or requirements for these trees to be maintained by Council's Arborist.

**6. Bike rack installation**

The Lessee will install bike racks at the rear of the kiosk at their own cost as part of the overall redevelopment project and will form part of the Lessees Improvements.

**7. Toilets**

The toilets that form part of the overall footprint of the 'Redevelopment' must remain open to the public when the kiosk is staffed. However, for clarity they are not described as public toilets and remain in the care control of the Lessee. This includes cleaning, servicing and stocking of supplies (toilet paper, soap, handtowel/hand-dryer) to a standard acceptable by Council.

**8. Grease Trap**

The Grease Trap was installed by the Council, however, once the kiosk becomes operational, the management of the grease trap will become the responsibility of the Lessee, and will assume all repair, maintenance and serving obligations.

**9. Green elements**

The Lessee covenants and agrees to maintain all green elements that form part of Council's approval, including the green wall to the exterior of the service enclosure as shown in the Concept Plans.

**10. Waste bins**

At the Lessees cost, an environmentally sensitive waste management system will be developed to ensure the reduction of waste to landfill. All waste bins to be stored in the Service Area, and place on Park Lands only on waste collection days.

**11. Kiosk external lighting**

The Lessee will be responsible for all external lighting as approved by Council, including immediate surrounds, deck, roof soffit and directly adjacent trees.

**ANNEXURE A**

**\*\*TO BE UPDATED PRIOR TO COMMUNITY CONSULTATION\*\***  
**LEASED AREA/PREMISES PLAN**

**INSERT PLAN**

**ANNEXURE B**

**\*\*TO BE UPDATED PRIOR TO COMMUNITY CONSULTATION \*\***  
**CONCEPT PLANS - PROPOSED REDEVELOPMENT**