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## **PARK LANDS LEASE AGREEMENT**

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**THE CORPORATION OF THE CITY OF ADELAIDE**

**(Council)**

**AND**

**ADELAIDE COMMUNITY SPORT AND RECREATION ASSOCIATION INC,**

**(Lessee)**

**[Portion of Golden Wattle Park / Mirnu Wirra (Park 21 West)]**

**IMPORTANT NOTICE**

*Retail and Commercial Leases Act 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 Consumers on 28 December 2011.

## Schedule

<b>Item 1</b> Leased Premises	That portion of the Park Lands being the area outlined in yellow as marked on the plan attached as Annexure A and known as Golden Wattle Park / Mirnu Wirra (Park 21 West).	
<b>Item 1A</b> Licence Area	That portion of the Park Lands being the area outlined in red as marked on the plan attached as Annexure A and known as Golden Wattle Park / Mirnu Wirra (Park 21 West).	
<b>Item 2</b> Initial Term	Seven (7) years commencing on 1 October 2025 ( <b>Commencement Date</b> ) and expiring at midnight on 30 September 2032	
<b>Item 3</b> Renewal(s) (if applicable)	Two (2) rights of renewal each for a further term of seven (7) years commencing 1 October 2032 and expiring at midnight 30 September 2046	
<b>Item 4</b> Lease Fee	Six thousand four hundred and thirteen dollars and no cents (\$6,413.00) per annum (exclusive of GST) (subject to annual review*)  <i>*Calculated at 583sqm x \$55 per sqm less 80% as per Park Lands Leasing and Licensing Policy (2016)</i>	
<b>Item 4A</b> Lease Fee Review Dates and Review Methods	<b>Lease Review Dates</b> 1 July annually	<b>Review Method</b> In accordance with Council's Adopted Fees and Charges
<b>Item 5</b> Licence Fee (if applicable)	Five thousand, six hundred and eleven dollars and thirteen cents (\$5,611.13) per annum (exclusive of GST) (subject to annual review*)  <i>*Calculated on 7.1ha of open playing fields maintained by the Lessee. These fees are re-set annually on 1 July.</i>	
<b>Item 5A</b> Licence Fee Review Dates and Review Methods	<b>Licence Review Dates</b> 1 July annually	<b>Review Method</b> In accordance with Council's Adopted Fees and Charges
<b>Item 6</b> Leased Premises Permitted Use	Club rooms in association with community sports and related community development activities	

<b>Item 7</b> Times of Use	Monday to Sunday (inclusive)  6am to 12 midnight
<b>Item 8</b> Refurbishment Dates	Three months prior to the expiry of the lease or upon such earlier termination
<b>Item 9</b> Licence Area Permitted Use	Playing of community sports and related community development activities
<b>Item 10</b> Special Conditions	<p><b>1. External Public Toilets</b></p> <p>1.1 Without limiting clause 8.1 and 8.4 of this Lease, the Lessee acknowledges and agrees that the External Public Toilets will on practical completion (to Council's reasonable satisfaction) become public toilets (for the general public's access and use as determined by Council) and the Council will be responsible for all general maintenance, repair, consumables, outgoings and cleaning (for so long as they remain public toilets).</p> <p>1.2 The Lessee will report (if and as soon as it becomes aware) any damage of the External Public Toilets to the Council so that the damage may be assessed and Council may coordinate timely repair.</p> <p>1.3 The Lessee acknowledges and agrees Council may install a remote security locking or similar system to the External Public Toilets.</p> <p><b>2. Adjacent Areas**</b></p> <p>2.1 In addition to any other terms of this Lease, the Lessee acknowledges and agrees the Lessee is responsible at the Lessee's cost to keep and maintain the landscape elements and features (including all plantings and vegetation) depicted or featured in the Concept Design and licensed area in good repair and in a clean and tidy state and condition.</p> <p>(**subject to final Development Approval plans).</p> <p><b>3. Lease Fee and Licence Fee</b></p> <p>3.1 Until such time that the existing Leased Premises (existing building) cannot be occupied by the Lessee, the Lease Fee will be \$4,125 per annum (exclusive of GST).</p> <p>3.2 Upon the Lessee occupying the redeveloped Premises (as per the Concept Design), the Lease Fee will be as per Item 4 of the Schedule.</p>

	<p>3.3 The Lessee shall not be required to make any Lease Fee payments for the period of time in which both the existing Leased Premises (existing building) and the redeveloped Leased Premises (new building) are unavailable, provided the Lessee continues to pay all other fees, rates and taxes during this time.</p> <p><b>4. Compensation</b></p> <p>4.1 The Lessee will not be entitled to any claim for compensation arising from the termination of the Lease under clause 14 or clause 25.13 (or clause 18.2 on default) unless occurring within the first fourteen (14) years of this agreement.</p> <p>4.2 If the Lease is terminated under clause 14 or clause 25.13 (or clause 18.2 on default) during the first fourteen (14) years of this agreement, the Council must pay the Lessee compensation having regard to the financial contribution by the Lessee to the redeveloped Premises (at the time of project completion).</p> <p>4.3 The compensation payable by the Council to the Lessee will be calculated by applying the following formula:</p> <div><div><div>Lessee's</div><div>financial</div><div>contribution</div></div><div>x</div><div><div>14 – (no. of years since the lease was executed)</div><div></div><div>14</div></div></div> <p>e.g.</p> <div><div><div>\$1,000,000</div><div>x</div><div><div>14 – (7 years since the lease was executed)</div><div></div><div>14</div></div></div><div>= \$500,000</div></div>
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## PARTIES

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

and

**ADELAIDE COMMUNITY SPORTS AND RECREATION ASSOCIATION INC.** of c/- 45 Fyfe Avenue, Torrens Park SA 5062 (**Lessee**)

## BACKGROUND

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

## AGREED TERMS

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In this lease:

**Agreed Consideration** means the Lease and Licence Fee, Outgoings and all other consideration (whether in money or otherwise) to be paid or provided by the Lessee for any supply or use of the Premises and any goods, services or other things provided by the Council under this lease (other than tax payable under clause 20).

**Building** means the interior and exterior of all present and future improvements on the Premises and includes all Services and all other conveniences, services, amenities and appurtenances of in or to the Building.

**Commencement Date** means the commencement date described in Item 2 of the Schedule.

**Concept Design** means the 'Park 21W Clubroom Concept Design' approved by Council on 10 December 2024.

**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 all fixtures and fittings, plant, equipment, services, chattels and other goods installed or situated in or on the Premises and available for use by the Lessee.

**Default Rate** means 2% per annum above the Local Government Finance Authority Cash Advance Debenture Rate.

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

**Environment** includes:

- (a) land, air and water;
- (b) any organic or inorganic matter and any living organism; and
- (c) 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 meaning 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 the rate of GST imposed from time to time under the GST Legislation.

**Institute** means the South Australian Division of the Australian Property Institute.

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

**Kadaltilla** means the Kadaltilla / Adelaide Park Lands Authority established under the *Adelaide Park Lands Act 2005* (SA), and any other relevant body from time to time.

**Lease Fee** means the lease fee described in Item 4 of the Schedule.

**Lease Fee Review Date** means each date described in Item 4A of the Schedule.

**Lease Fee Review Method** means the relevant method of reviewing the Lease Fee in Item 4 A of the Schedule for any Review Date.

**Legislation** includes any relevant Act of Parliament (whether State or Federal) and any regulation or by-law including by-laws issued by any local government body or authority.

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

**Lessee's Equipment** means any and all fixtures and fittings and other equipment installed in or brought on to or kept in the Premises by the Lessee.

**Licence** means the licence granted under clause 25.

**Licence Area** means the area described in Item 1A of the Schedule.

**Licence Area Permitted Use** means the permitted use of the Licence Area described in Item 9 of the Schedule.

**Licence Fee** means the licence fee described in Item 5 of the Schedule.

**Licence Fee Review Dates** each date described in Item 5A of the Schedule.

**Licence Fee Review Methods** each date described in Item 5A of the Schedule.

**Maintenance Schedule** means the Maintenance Schedule at Annexure CC.

**Outgoings** means the total of all amounts paid or payable by the Council in connection with the ownership, management, administration and operation of the Premises and/or Building.

**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 the first day of each month during the Term.

**Permitted Use** means the use described in Item 6 and Item 9 of the Schedule.

**Premises** means the premises described in Item 1 of the Schedule including all present and future improvements thereon and the Council's Equipment.

**Rates and Taxes** means all present and future rates, charges, levies, assessments, duty and charges of any Statutory Authority, department or authority having the power to raise or levy any such amounts in respect of the use, ownership or occupation of the Park Lands or Premises and includes water and sewer charges, council rates, emergency services levy.

**Renewal Term/s** means the term/s (if any) of renewal or extension in Item 3 of the Schedule.

**Services** means all services (including gas, electricity, water, sewerage, fire control systems, air-conditioning, plumbing and telephone and all plant, equipment, pipes, wires and cables in connection with them as applicable) to or of the Premises or Building supplied by any authority, the Council or any other person the Council authorises.

**Statutory Authorities** means any government or authorities created by or under any relevant Legislation.

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

**Term** means the Initial Term, the Renewal Term/s and any period during which the Lessee holds over or remains in occupation of the Premises.

**Times of Use** means the periods/times that the Lessee may use the Premises and Licence Area set out in Item 7 of the Schedule:

## 1.2 Interpretation

In this lease, unless the context otherwise requires:

- 1.2.1 a reference to a party includes its executors, administrators, successors and permitted assigns;
- 1.2.2 a reference to a person includes a partnership, corporation, association, government body and any other entity;
- 1.2.3 a reference to this lease includes any schedules and annexures to this lease;
- 1.2.4 a reference to any document (including this lease) is to that document as varied, novated, ratified or replaced from time to time;
- 1.2.5 a reference to legislation includes any amendment to it, any legislation substituted for it, and any subordinate legislation made under it;
- 1.2.6 an unenforceable provision or part of a provision may be severed, and the remainder of this lease continues in force; and
- 1.2.7 the special conditions in Annexure B prevail over the terms in the body of this lease to the extent of any inconsistency.

## 1.3 Background

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 Premises for the Term as set out in this lease.

## 3. LEASE FEE

### 3.1 Payment of Lease Fee

The Lessee must pay the Lease Fee by equal monthly instalments in advance, the first payment to be made on or before the Commencement Date and subsequent payments must be made on the same day of each calendar month during the Term without any abatement, deduction or demand.



### **3.2 Instalment**

If a Lease Fee 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. REVIEW OF LEASE FEE**

The Lease Fee is reviewed annually in accordance with Item 4A of the Schedule by the Council as part of the review of Council's schedule of fees and charges for the Park Lands.

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

### **5.1 Liability for Rates and Taxes**

5.1.1 The Lessee must pay or reimburse the Council all Rates and Taxes levied, assessed or charged in respect of the Premises or relating to the Lessee's use or occupation of the Premises.

5.1.2 The applicable Rates and Taxes must be adjusted between the Council and the Lessee as at the Commencement Date and the end or termination date of this lease.

### **5.2 Payment of Outgoings**

5.2.1 The Lessee must pay or reimburse the Council all Outgoings levied, assessed or charged in respect of the Premises or upon the owner or occupier of the Premises.

5.2.2 The Outgoings must be adjusted between the Council and the Lessee as at the Commencement Date and the end or termination date of this lease.

### **5.3 Power and other utilities**

5.3.1 The Lessee must pay, when due, all costs for the use of telephone, light and other facilities and the consumption of electricity, gas, water and any and all other services and utilities supplied to or used from the Premises.

5.3.2 If there is no separate meter for a service or utility used on or from the Premises and if the Council so requires, the Lessee must install the meter at its own cost.

5.3.3 Without limiting this subclause, the Lessee must comply with the *Electricity (General) Regulations 2012* (SA) and any other applicable electricity laws.

## **6. USE OF PREMISES**

### **6.1 Permitted Use**

The Lessee may use the Premises only for the Permitted Use and must not use or allow the Premises to be used for any other use without the Council's consent.

### **6.2 Park Lands**

Subject to the terms of this lease, the Lessee must comply with the approved management plans, guidelines and strategies (from time to time) of the Council and Kadaltilla with respect to the use and occupation of the Premises (being part of the Park Lands).

### **6.3 Offensive activities**

The Lessee must not carry on any offensive or dangerous activities on or from the Premises or create a nuisance or disturbance on the Premises at any time, and must ensure at all times that activities conducted on or from the Premises do not discredit the Council.

### **6.4 Use of facilities**

6.4.1 The Lessee must ensure that the Services are used carefully and responsibly and in accordance with any directions given by the Council from time to time.

6.4.2 The Lessee must 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 (including the *Work Health and Safety Act 2012* (SA) and the *Food Act 2001*) relating to the Lessee's use and occupation of the Premises, as well as the Permitted Use.

### **6.6 No alcohol**

6.6.1 The Lessee must not:

6.6.1.1 serve, sell or provide to persons; or

6.6.1.2 consume or allow persons to consume;

alcoholic beverages on the Premises without the Council's consent.

6.6.2 The Lessee must not allow any activities to be carried out on the Premises that would require a liquor licence under the *Liquor Licensing Act 1997* (SA) without the Council's consent.

### **6.7 Gaming Machines and gambling**

The Lessee must not install or operate gaming machines on the Premises nor promote or allow any gambling related activities on the Premises.

## **6.8 Signs**

The Lessee must not place any sign or advertisement on the outside or inside (if they can be seen from outside) of the Premises, except a sign or advertisement which is approved by the Council and complies with any relevant Statutory Requirements and policies of the Council.

## **6.9 Dangerous equipment and installations**

The Lessee may only install or use within the Premises equipment and facilities which are reasonably necessary for and normally used in connection with the Permitted Use and must not install or bring onto the Premises:

- 6.9.1 any electrical, gas powered or other machinery or equipment that may pose a danger, risk or hazard;
- 6.9.2 any chemicals or other dangerous substances that may pose a danger, risk or hazard; or
- 6.9.3 any heavy equipment or items that may damage the Premises or Building.

## **6.10 Fire precautions**

The Lessee must, at its cost, comply with all Statutory Requirements relating to fire safety and procedures including carrying out any structural works or modifications or other building works which are required as a consequence of the Lessee's use of the Premises.

## **6.11 Security**

The Lessee must keep the Building(s) securely locked at all times when the Building(s) are not occupied and must provide a key, alarm codes and fobs and any other items required for access to the Premises to the Council.

## **6.12 No vehicles**

The Lessee must not or 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.

## **6.13 No warranty**

The Council makes no warranty or representation regarding the suitability of the Premises (structural or otherwise) for the Permitted Use or any other purpose.

# **7. INSURANCE**

## **7.1 Lessee must insure**

The Lessee must keep current during the Term:

- 7.1.1 public risk insurance for at least \$20,000,000.00 (or any other amount the Council reasonably requires) for each claim;

- 7.1.2 all insurance in respect of the Lessee's Equipment for its full replacement value; and
- 7.1.3 other insurances required by any Statutory Requirement or which the Council reasonably requires.

## **7.2 Requirements for policies**

Each policy must:

- 7.2.1 be with an insurer and on terms reasonably approved by the Council;
- 7.2.2 be in the name of the Lessee and note the interest of the Council and any other person the Council requires; and
- 7.2.3 cover events occurring during the policy's currency regardless of when claims are made.

## **7.3 Evidence of insurance**

The Lessee must give the Council certificates evidencing the currency of each policy. During the Term the Lessee must:

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

## **7.4 Insurance affected**

- 7.4.1 The Lessee must not do anything which may:
  - 7.4.1.1 prejudice any insurance of the Premises or the Building; or
  - 7.4.1.2 increase the premium for that insurance.
- 7.4.2 If the Lessee does anything (with or without the Council's consent) that increases the premium of any insurance the Council has in connection with the Premises or the Building, the Lessee must on demand pay the amount of that increase to the Council.

## **7.5 Council to insure**

- 7.5.1 The Council will insure the Building during the Term and the Lessee must reimburse the Council on demand the cost of such insurance.
- 7.5.2 If the Council maintains an insurance policy that covers the Premises and other buildings and improvements, the Lessee must

reimburse a share of the Council's cost of such insurance which will be calculated as the proportion the current value of the Premises (as determined by Council) bears from time to time to the value of all other buildings and improvements covered by and included in that insurance.

- 7.5.3 The Council will provide the Lessee with evidence of the currency of such insurance (if requested by the Lessee) provided that if any insurance of Council is maintained under any discretionary self-insured fund then no certificate of currency or copy of any insurance policy will be available to the Lessee.

## **8. REPAIR AND MAINTENANCE**

### **8.1 Repair and Maintenance**

- 8.1.1 The Lessee must, at its cost, keep, maintain, repair and replace the Premises, the Lessee's Equipment and any Services situated within the Premises in accordance with the Maintenance Schedule.
- 8.1.2 Any repairs of a structural nature will be the responsibility of the Council, except if specified otherwise in the Maintenance Schedule or if relating to any alterations to the Premises made by the Lessee in accordance with clause 8.2.
- 8.1.3 The Council may update or amend the Maintenance Schedule at its discretion, acting reasonably, and must provide the Lessee with a copy of the updated or amended Maintenance Schedule.
- 8.1.4 For the avoidance of doubt, the Lessee will be responsible for the repair and maintenance of Council's Equipment during the Term and must replace any damaged (through misuse) or missing Council's Equipment during the Term, to the same standard and value as the original.
- 8.1.5 If the Council so requires, the Lessee must promptly repair any damage to the Premises or Building caused or contributed to by the act, omission, negligence or default of the Lessee.

### **8.2 Alterations by Lessee**

- 8.2.1 The Lessee must not carry out any alterations or additions to the Premises without the Council's consent.
- 8.2.2 The Lessee must provide full details of the proposed alterations and additions to the Council.
- 8.2.3 The Council may impose any conditions it considers necessary, acting reasonably, if it gives its approval, including requiring the Lessee to obtain the Council's consent to any agreements that the Lessee enters into in relation to the alterations or additions.

8.2.4 Unless otherwise agreed in writing between the parties, all alterations and additions to the Premises made pursuant to this clause become the property of the Council.

8.2.5 The Lessee must pay all of the Council's costs (including consultant's costs and legal costs) as a result of the Lessee's alterations and additions.

### **8.3 Refurbishment**

The Lessee must refurbish the Premises on or before each date specified in Item 8 of the Schedule and in accordance with the following requirements:

8.3.1 clean and repair all surfaces to be redecorated;

8.3.2 paint or wallpaper, stain, varnish or polish each surface to be redecorated according to the previous treatment of that surface; and

8.3.3 comply with all Lessee responsibilities listed in the Maintenance Schedule.

### **8.4 Cleaning**

The Lessee must:

8.4.1 keep the Premises clean and tidy;

8.4.2 keep the Premises free of weeds and keep any vegetation, lawns or garden on the Premises maintained in an attractive state;

8.4.3 arrange the removal of any graffiti from any surface within the Premises; and

8.4.4 at its cost, arrange for an annual pest inspection to be carried out with respect to the Premises by a licensed pest control company, and must provide the Council with a copy of the annual pest inspection report within 14 days of receiving the report from the relevant company.

## **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 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 19, the Lessee indemnifies the Council against any claims for any loss as a result of 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. ASSIGNMENT, SUBLETTING AND HIRING OUT**

## **10.1 Subletting, hiring out and parting with possession**

10.1.1 The Lessee acknowledges and agrees that the Lessee must (to the extent applicable and where practicable to do so) use reasonable endeavours to make the Premises and the Licence Area available (including by sub-leasing or casual hiring) for use during the Term by non-for-profit community groups and organisations when not in use by the Lessee.

10.1.2 The Lessee further acknowledges and agrees:

10.1.2.1 Council will direct any enquires from any non-for-profit community organisations and groups to the Lessee to manage these requests.

10.1.2.2 The Lessee must provide a contact person for managing enquiries for use of the improvements and maintain a register of the requests including details of available use (including names, dates and times); and

10.1.2.3 that the fees charged for any sublease or hiring out the Premises or Licence Area under this clause must be consistent with the Council's relevant leasing and licensing policies, and must be proportionate to the times of use granted and the Lessee's own fees and costs, and not for the purpose of making a profit

10.1.2.4 If requested by Council the Lessee must meet with Council (but not more frequently than once a year) to review the register of the requests (including sub-leasing and hiring arrangement) and evaluate the details of available use.

10.1.2.5 If Council (acting reasonably) is of the view that the Lessee has not made the Premises or Licence Area sufficiently available as required by this clause, the Council may require

the Lessee to submit a plan to increase the level of community access.

- 10.1.2.6 It will be a breach of this Lease (after notice) if the Lessee fails to submit a plan or, after submitting the plan, fails to comply with the plan required to give effect to this condition.

## **10.2 Assignment**

- 10.2.1 The Lessee may only assign or sublease or otherwise part possession with the Premises with the consent of the Council, which consent may be granted at the Council's discretion and subject to any conditions that the Council sees fit.
- 10.2.2 If the Lessee requests that the Council consent to any assignment, transfer or other dealing the Lessee must comply with Council's procedural requirements for dealing with the request.

## **10.3 Costs**

The Lessee and the Council will bear its own costs incurred (including the costs of any consultant or any legal fees) in relation to any dealing with the Premises, including in considering whether or not to grant consent under this clause.

## **11. LESSEE GOVERNANCE**

Annually, on each anniversary of the Commencement Date during the Term, the Lessee must provide to the Council a copy of the Lessee's annual reports (including minutes and financial reports), maintenance reports and subletting agreements, if requested by the Council.

## **12. COUNCIL'S OBLIGATIONS AND RIGHTS**

### **12.1 Quiet enjoyment**

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

### **12.2 Right to enter**

The Council may (except in an emergency when no notice is required) enter the Premises after giving the Lessee 14 days' notice:

- 12.2.1 to see the state of repair of the Premises;
- 12.2.2 to do repairs to the Premises or the Building or other works which cannot reasonably be done unless the Council enters the Premises;
- 12.2.3 to do anything the Council must or may do under this lease or must do under any Legislation or to satisfy the requirements of any Statutory Authority; and
- 12.2.4 to show prospective lessees through the Premises.



### 12.3 **Emergencies**

In an emergency the Council may:

- 12.3.1 close the Premises or Building; and
- 12.3.2 prevent the Lessee from entering the Premises or Building.

### 12.4 **Works and restrictions**

12.4.1 The Council may:

- 12.4.1.1 install, use, maintain, repair, alter, and interrupt Services;
- 12.4.1.2 carry out works on the Park Lands or Building (including extensions, renovations and refurbishment); and
- 12.4.1.3 close (temporarily or permanently) and restrict access to any part of the Park Lands.

12.4.2 The Council must (except in an emergency) take reasonable steps to minimise interference with the Lessee's use and occupation of the Premises and Licenced Area, and where practical provide reasonable notice to the Lessee of any proposed activities contemplated by clause 12.4.1.

### 12.5 **Right to rectify**

The 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.

### 12.6 **Park Lands Events**

- 12.6.1 The Lessee acknowledges and agrees that (subject to its location in the Park Lands) the Premises may not be available for use and occupation as a result of public or special events to be held in the Park Lands.
- 12.6.2 The Lessee may not make any claim against the Council arising from or in connection with any public or special events or the Premises not being available for the Lessee's use and occupation.
- 12.6.3 The Lessee will not be required to make any payments on account of instalments of the Lease Fee for the period the Premises is not

available for use by the Lessee as a consequence of any public or special event.

### **13. TERMINATION FOR DAMAGE OR DESTRUCTION**

- 13.1 If the Premises are destroyed or are damaged so that they are unfit for the Lessee's use then, within three (3) months after the damage or destruction occurs, the Lessee must give the Council a notice either:
- 13.1.1 terminating this Lease (on a date at least one (1) month after the Lessee gives notice); or
  - 13.1.2 advising the Council that the Lessee (at the Lessee's costs) intends to repair or replace the Premises so that the Lessee can occupy and use the Leased Area.
- 13.2 If the Lessee gives a notice under clause 13.1 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).
- 13.3 If the Lessee does not comply with the Council's notice under clause 13.2, 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.

### **14. REDEVELOPMENT, ASSET RATIONALISATION AND DEMOLITION**

- 14.1 If as part of any redevelopment, asset rationalisation or other project conducted by the Council or a Statutory Authority that includes the Park Lands, or for any other reason, the Council or a Statutory Authority wishes to demolish or acquire vacant possession of the Premises or any part of the Premises, then the Council may terminate this lease with six (6) months' notice to the Lessee.

## **15. DISPUTES RESOLUTION**

### **15.1 Dispute**

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

### **15.2 Notice of Dispute**

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

### **15.3 Effort to resolve**

- 15.3.1 For twenty (20) Business Days after the notice in clause 15.2, each party to the Dispute must use reasonable efforts to resolve the Dispute.

### **15.4 Mediator**

- 15.4.1 If the parties cannot resolve the Dispute under clause 15.3 within that period, they must refer the Dispute to a mediator.
- 15.4.2 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.
- 15.4.3 The mediator assists in negotiating a resolution of the Dispute. A mediator may not bind a party unless the party agrees in writing.
- 15.4.4 The mediation ends if the Dispute is not resolved within twenty (20) Business Days after the mediator's appointment.

### **15.5 Confidentiality**

- 15.5.1 Each party:
  - 15.5.1.1 must keep confidential any information or documents disclosed in the dispute resolution process; and
  - 15.5.1.2 may use that information or those documents only to try to resolve the Dispute.

### **15.6 Cost of dispute**

- 15.6.1 Each party to a Dispute must pay its own costs of complying with this clause.

### **15.7 Breach of dispute clause**

- 15.7.1 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.

## **16. RENEWAL**

- 16.1 If a right of renewal or first right of renewal is specified in Item 3 of the Schedule and the Lessee wishes to exercise that right of renewal, then the Lessee must give a written notice to the Council not less than 6 months and not more than 12 months before the expiry of the Initial Term stating it wishes to renew this lease for the period specified in Item 3 of the Schedule. If such notice is given the Council must renew this lease for the first Renewal Term on the terms in this lease (except this subclause) commencing immediately after the Initial Term expires.
- 16.2 If a second right of renewal is specified in Item 3 of the Schedule and the Lessee wishes to exercise that right of renewal, then the Lessee must give a written notice to the Council not less than 6 months and not more than 12 months before the expiry of the first Renewal Term stating it wishes to renew this lease for the period specified in Item 3 of the Schedule. If such notice is given the Council must renew this lease for the second Renewal Term on the terms in this lease (except this subclause and the previous subclause) commencing immediately after the first Renewal Term expires.
- 16.3 The Lessee is not entitled to renew this lease if:
- 16.3.1 the Lessee is in breach of this lease at the time of giving that notice; or
  - 16.3.2 the Lessee is in breach or commits a breach of this lease after giving that notice but before the commencement of the first or second Renewal Term (as applicable).

## **17. RIGHTS AND OBLIGATIONS ON EXPIRY**

### **17.1 Expiry**

This lease comes to an end at midnight on the last day of the Term unless it is terminated earlier by the Council or the Lessee under this lease.

### **17.2 Handover of possession**

Before this lease comes to an end, the Lessee must (if required to do so by the Council):

- 17.2.1 remove all of the Lessee's Equipment and repair any damage caused by such removal;
- 17.2.2 no later than one (1) month before this lease comes to an end, provide the Council with a written summary of all alterations and additions the Lessee made to the Premises, whether those alterations and additions were authorised by the Council or not;
- 17.2.3 remove and reinstate any alterations or additions made to the Premises by the Lessee unless otherwise specified by the Council;
- 17.2.4 refurbish the Premises as required under clause 8.3; and

- 17.2.5 complete any repairs which the Lessee is obliged to carry out under this lease.

### **17.3 Abandoned goods**

If, when this lease comes to an end, the Lessee leaves any goods or equipment at the Premises, then the Council may deal with and dispose of those goods at its discretion.

### **17.4 Holding over**

If, with the Council's consent, the Lessee continues to occupy the Premises after the end of this lease, the Lessee does so under a monthly tenancy which:

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

## **18. BREACH**

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

- 18.1.1 The Council may come onto the Premises and remedy a breach of this lease without notice:
  - 18.1.1.1 in an emergency; or
  - 18.1.1.2 if the Lessee breaches any provision of this lease and fails to remedy the breach within 14 days after receiving notice requiring it to do so.
- 18.1.2 The Lessee must pay or reimburse the Council on demand for all costs of remedying the breach.

### **18.2 Breach and re-entry**

If:

- 18.2.1 the Lessee fails to pay a sum of money when due and fails to remedy that failure within 14 days after receiving notice requiring it to do so; or
- 18.2.2 the Lessee breaches any other provision of this lease and fails to remedy the breach within 14 days after receiving notice requiring it to do so;

then despite any other clause of this lease, the Council:

- 18.2.3 may terminate this lease and re-enter and repossess the Premises, without prejudice to its other rights; and
- 18.2.4 is discharged from any claim by or obligation to the Lessee under this lease.

**18.3 Rights of Council not limited**

A power or right of the Council under this lease or at law resulting from a breach or repudiation of this lease by the Lessee, or the exercise of such power or right, does not limit the Council's powers or rights.

**18.4 Interest on overdue amounts**

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

**19. INDEMNITY AND RELEASE**

**19.1 Risk**

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

**19.2 Indemnity**

The Lessee is liable for and must indemnify the Council against all actions, liabilities, penalties, claims or demands for any loss, damage, injury or death incurred or suffered directly or indirectly including in connection with:

19.2.1 any act or omission of the Lessee;

19.2.2 the use of the Premises by the Lessee or otherwise relating to the Premises; or

19.2.3 a breach of this lease by the Lessee.

**19.3 Release**

The Lessee releases the Council from all actions, liabilities, penalties, claims or demands for any damage, loss, injury or death occurring in the Premises or the Building except to the extent that they are caused by the Council's negligence.

**19.4 Indemnities are independent**

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

**20. GOODS AND SERVICES TAX**

20.1 If the Council is liable to pay GST in connection with a supply under this lease then:

20.1.1 the Agreed Consideration for that supply is exclusive of GST;

20.1.2 the Council may increase the Agreed Consideration or the relevant part of the Agreed Consideration by the GST Rate; and

20.1.3 the Lessee must pay the increased Agreed Consideration on the due date for payment by the Lessee of the Agreed Consideration.

- 20.2 Where the Agreed Consideration is increased under this clause, the Council must, on or before the date on which the Agreed Consideration is payable, issue a tax invoice to the Lessee.
- 20.3 If the Lessee breaches this clause 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 penalties and interest.

## **21. RESUMPTION**

The Council may terminate this lease by giving at least six (6) months' written notice to the Lessee if the Council receives notice of resumption or acquisition of the Premises or the Building or the Park Lands (or any part of the Building or the Park Lands affecting the Premises) from or by any Statutory Authority governmental or semi-governmental body.

## **22. MISCELLANEOUS**

### **22.1 Entire agreement**

This lease constitutes the entire agreement between the parties about the Premises and supersedes any prior understanding, agreement, condition, warranty, indemnity or representation about the Premises.

### **22.2 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.

### **22.3 Exercise of power**

- 22.3.1 The failure, delay, relaxation or indulgence by a party in exercising a power or right under this lease is not a waiver of that power or right.
- 22.3.2 An exercise of a power or right under this lease does not preclude a further exercise of it or the exercise of another right or power.

## **23. NOTICE**

A notice, demand, consent, approval or communication under this lease (**Notice**) must be in writing and will be sufficiently given if sent via email to either parties' nominated email address or if posted by pre-paid post to the last known address of either party.

## **24. COSTS**

On request, the Lessee must pay or reimburse to the Council all legal and other costs incurred by the Council in consequence of any actual or threatened breach by the Lessee under this lease or in exercising or enforcing (or attempting to do so) any rights or remedies of the Council under this lease or at law or otherwise arising in consequence of any actual or threatened breach by the Lessee.

## **25. LICENCE**

For the purpose of this clause:

**'buildings, fixtures, fittings or structures'** includes all drains, pipes, fencing, goal posts, manholes, reticulation equipment, all electrical equipment (including floodlights) and similar services (and in cases where tennis courts form the whole or part of the Licence Area will also include all court surfaces, perimeter fencing, net posts and perimeter access gates).

#### **25.1 Grant of Licence**

The Council grants to the Lessee a licence during the Term to use the Licence Area for the Licence Area Permitted Use during the Times of Use.

#### **25.2 Term of Licence**

The Licence will (while the Lessee named in this lease is the lessee in occupation of the Premises) continue (subject to this clause) until the end of the Term or the sooner surrender or determination of this lease.

#### **25.3 Licence Fee**

25.3.1 The Lessee must pay the Licence Fee by equal annual instalments in advance on the Commencement Date and then on 1 July during each year of the Term.

25.3.2 If the Commencement Date is not 1 July, then the first and last payment will be adjusted based on the number of days from the Commencement Date to 30 June next and the number of days in the relevant year.

25.3.3 The Licence Fee is reviewed annually in accordance with Item 5A of the Schedule by the Council as part of the review of Council's schedule of fees and charges for the Park Lands.

#### **25.4 Licence Area Permitted Use**

The Lessee must not use or permit the Licence Area to be used other than for the Licence Area Permitted Use and only during the Times of Use.

#### **25.5 Rates and utilities**

25.5.1 The Lessee must pay or reimburse the Council for all rates, taxes, levies or other charges (including Council rates assessed by the Council as a Statutory Authority) arising from the grant of this licence or in respect of the Licence Area.

25.5.2 The Lessee must pay or reimburse the Council as and when due for payment or if required by the Council then within seven (7) days of demand all costs, fees and charges for the provision of:

25.5.2.1 electricity, water, gas, oil and other energy or fuels supplied to and consumed in the Licence Area; and

25.5.2.2 telephone, facsimile and other communication services, waste disposal in respect of the Licence Area and all other utility services supplied to or consumed in or on in respect of the Licence Area;

whether supplied by the Council or any other person.



**25.6 Insurance**

The Lessee must ensure that any insurance policies required to be effected and maintained by the Lessee under clause 7 of this lease extend (to the extent applicable) to cover the Licence Area, the use of the Licence Area and any buildings, fixtures, fittings or structures erected or placed on the Licence Area.

**25.7 No assignment or subletting**

The Lessee must not assign, transfer, sublicense or otherwise deal with the Lessee's rights under this Licence without the consent of the Council.

**25.8 Improvements**

25.8.1 The Lessee must not erect, fix or place any buildings, fixtures, fittings or structures in, on or under any part of the Licence Area without the consent of the Council.

25.8.2 Any buildings, fixtures, fittings or structures erected, fixed or placed (by whatever means) upon the Licence Area will unless otherwise agreed remain until the end of the term of this licence the property of the Lessee but may not be removed from the Licence Area without the consent of the Council.

**25.9 Maintenance of improvements**

The Lessee must maintain and repair any buildings, fixtures, fittings or structures erected fixed or placed in, on or under the Licence Area in good and safe repair and condition as determined by Council.

**25.10 Events on Park Lands within Licence Area**

25.10.1 Council may (in accordance with its events management policies (as amended from time to time)) grant approval to others to hold events within the Licence Area on terms determined by the Council.

25.10.2 Subject to clause 25.10.3, the Lessee may not make any claim for any loss or interruption arising from any such approval or being required to relocate to an alternate licence area for the duration of the event.

25.10.3 Where the event to be held in the Park Lands is proposed by Council (Council Event) and that such a Council Event will restrict

or prevent the Lessee's occupation and use of the Licence Area, the Council must:

25.10.3.1 occasion to the Lessee as little disturbance and damage as is practicable and provide 6 months' notice of any Council Event;

25.10.3.2 keep and maintain the Licence Area in good condition and repair and promptly rectify any damage to the Licence Area during the Council Event; and

25.10.3.3 repair any damage to the Licence Area to restore and make good any damage to the condition existing prior to the Council Event.

25.10.4 The Lessee will not be required to make any payments on account of instalments of Lease and Licence Fees for the period the Licence Area is not available for use by the Lessee as a consequence of any Council Event.

25.10.5 The Lessee acknowledges and agrees that this clause does not apply to 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 Licence Area is not a Council Event.

#### **25.11 To obey policies and direction**

The Lessee must comply with and cause to be complied with all Council policies, directions, rules and by-laws from time to time regarding the Licence Area or the Licence Area Permitted Use including Council's "Adelaide Park Lands Leasing and Licensing" policy (or any update or replacement policy (from time to time)).

#### **25.12 Public access and membership**

The Lessee must allow unrestricted public access to those playing fields and surfaces within the Licence Area at all times when the Lessee is not using them.

#### **25.13 Relocation**

The Council will have the right where in the opinion of the Council there exists a valid commercial reason so to do at any time during the duration of this Licence to relocate the Lessee to another location on the Park Lands provided that the Council will have given not less than six (6) months' notice of its intention to the Lessee.

#### **25.14 Nature of licence**

The rights granted by the licence conditions in this clause do not create in or confer upon the Lessee any tenancy or any estate or interest in the Licence Area. The rights granted do not confer upon the Lessee any right of exclusive use or occupation and the Council may from time to time exercise all rights

which may include the use and enjoyment of the whole or any part of the Licence Area.

**25.15 No warranty**

The Council makes no warranty or representation regarding the suitability of the Licence Area including any buildings, fixtures, fittings or structures in, on or under any part of the Licence Area (whether erected fixed or placed by the Council, any previous licence holder or any other person) for the Licence Area Permitted Use or any other purpose.

**25.16 Interpretation**

Unless the contrary intention appears:

25.16.1 a breach of the terms of this Licence will be an event of default under this lease; and

25.16.2 all of the "Lessee's covenants" and the Council's rights in this lease are deemed to be incorporated into this Licence as if they were specifically set out in this Licence (including any terms or requirements for Council's consent) so that "Premises" in the lease terms will mean "Licence Area" (as defined in this clause) and the Lessee agrees to observe and perform all of the "Lessee's" covenants and be subject to the Council's rights in relation to the Licence Area.

**EXECUTED** as an agreement on this day ..... (date)

**EXECUTED** by an authorised  
representative of **THE CORPORATION  
OF THE CITY OF ADELAIDE** under  
delegation pursuant to section 44 of the  
Local Government Act 1999:

.....  
Signature of Authorised Representative

.....  
Signature of Witness

.....  
Name of Authorised Representative (print)

.....  
Name of Witness (print)

.....  
Position of Authorised Representative (print)

**THE COMMON SEAL of ADELAIDE  
COMMUNITY SPORTS AND  
RECREATION ASSOCIATION INC.  
was affixed in the presence of;**

)  
)  
)

.....  
Chairperson/Vice Chairperson

.....  
Committee/Board Member

.....  
Name

.....  
Name

## Annexure A Lease and Licence Plan



**Annexure B      Approved Building Design and Landscape (Development Approval)  
Plans**

To be inserted

## **Annexure C      Maintenance Schedule**

The following list of maintenance responsibilities will take priority over any related provisions of the lease to the extent of any ambiguity or conflict.

To be inserted