

**INSERT NEW LOGO**

# **PARK LANDS COMMERCIAL LEASE AGREEMENT JOLLEY'S BOATHOUSE**

## **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.

# PARK LANDS COMMERCIAL LEASE AGREEMENT

**THIS PARK LANDS LEASE AGREEMENT** is made the                      day of                      20

## BETWEEN

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

**AND**

**JOLLEY'S BOAT HOUSE BISTRO PTY LTD** (ACN 008 064 953) c/- Level 1, 170 Greenhill Road, Parkside SA 5063 ('Lessee')

## BACKGROUND

- A. The Lessor has the care, control and management of the Park Lands.
- B. The Lessee has requested a lease to use the Premises for the Permitted Use.
- C. The Lessor 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* and the *Adelaide Park Lands Act 2005*.
- D. The Lessor and Lessee wish to record the terms of their agreement in this Lease.

**AND THE PARTIES AGREE** as follows:

## SCHEDULE

<b>ITEM 1</b> Premises	The whole of the area delineated in red on the plan in Annexure B, being a portion of the Park Lands.
<b>ITEM 2</b> Term of Lease	Three (3) years commencing on 1 August 2021 (' <b>Commencement Date</b> ') and expiring at midnight on 31 July 2024.
<b>ITEM 3</b> Rent and manner of payment	[\$TBC - to be a Market Value rate as agreed between the parties] per annum exclusive of GST subject to review under clause 6. The annual Rent is payable by equal consecutive calendar monthly instalments always in advance, equal to one twelfth of the annual Rent. The first instalment must be paid on the Commencement Date (being a proportionate instalment if appropriate) and after that on the first day of each and every following month.
<b>ITEM 4</b> Rent Review Dates and Methods	<p>(a) Market Review Dates – 1 August 2024, 1 August 2029 and 1 August 2034</p> <p>(b) CPI Review Dates - Annually on every anniversary of the Commencement Date during the Term other than the dates specified in Item 4(a) above.</p> <p>(c) Fixed Review Dates-</p>
<b>ITEM 5</b> Permitted Use	Kiosk and licensed restaurant

<b>ITEM 6</b> Renewals	<p>(a) A further term of five (5) years commencing on 1 August 2024 and expiring on 31 July 2029</p> <p>(b) A further term of five (5) years commencing on 1 August 2029 and expiring on 31 July 2034</p> <p>(c) A further term of five (5) years commencing on 1 August 2034 and expiring on 31 July 2039.</p>
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## 1. DEFINED TERMS AND INTERPRETATION

In this Lease, unless the contrary intention appears:

- 1.1 **APLA** means the Adelaide Park Lands Authority established under the Park Lands Act;
- 1.2 **Business Day** means any day other than a Saturday, Sunday or public holiday in South Australia;
- 1.3 **Commencement Date** means the date of commencement of the Term set out in Item 2 of the Schedule;
- 1.4 **Contamination** means the presence in, on or under land, buildings, air or water of a substance (solid, liquid or gel) or matter (whether emitting odour, heat, sound, vibration or radiation) at a concentration or level above the concentration or level at which the substance or matter is normally present in, or under land, buildings, air or water in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the Environment, or results in non-compliance with or breach of any Environmental Law (and contaminant, contaminated and contaminate each have a corresponding meaning);
- 1.5 **CPI** means the consumer price index published by the Australian Bureau of Statistics for All Groups (Adelaide);
- 1.6 **Current Market Rent** means the annual rent that can reasonably be obtained for the Premises in the open market by a willing but not anxious Lessor but adjusted on the basis that:
  - 1.6.1 the Lessee and the Lessor have observed all of the terms of this Lease;
  - 1.6.2 the Lessee will occupy the Premises on the terms of this Lease; and
  - 1.6.3 taking into consideration:
    - (a) current rent values in respect of new tenancies of vacant premises similar to the Premises;
    - (b) current rent values in respect of rent reviews during current tenancies of premises similar to the Premises;
    - (c) current rent values in respect of renewals of existing tenancies of premises similar to the Premises; and
    - (d) the value of permanent structural improvements erected or installed on the Premises at the Lessor's or Lessee's expense and which the Lessee may not remove at the expiry of the Term,
  - 1.6.4 but ignoring:
    - (a) any value attaching to goodwill created by the Lessee's occupation of the Premises;
    - (b) any value attaching to the Lessee's trade fixtures and fittings on the Premises;

- (c) the fact that part of the Term has elapsed at the Review Date;
  - (d) any Rent free period, financial contribution, allowance or inducement whether in cash or kind or other concession customarily or likely to be offered to the Lessee or to Lessees of comparable premises;
- 1.7 **Default Rate** means ten percent (10%);
- 1.8 **Environment** includes land, air, water, and any organic or inorganic matter, living organism, and human made or modified structures and areas;
- 1.9 **Environmental Law** means any law that deals with an aspect of the Environment or health whether made before or after the Commencement Date;
- 1.10 **GST** has the same meaning given to that term in the GST Act;
- 1.11 **GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* and any ancillary legislation;
- 1.12 **GST Rate** at a particular time is a reference to the rate of the GST (as a percentage of the GST exclusive price or cost of a Supply) at that time;
- 1.13 **Institute** means the Australian Property Institute (South Australian Division) or if that body no longer exists then its successor or equivalent;
- 1.14 **Land** means the whole of the land described in Item 1 of the Schedule;
- 1.15 **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;
- 1.16 **Lessee** means the person named and defined as such on page 1 of this Lease (and if more than one then jointly and severally) and where the context allows the heirs, executors, administrators, successors and permitted assigns of that person (and if more than one then jointly and severally);
- 1.17 **Lessee's Agents** means each of the Lessee's agents, contractors, officers, employees, subtenants, invitees and other persons claiming through or under the Lessee;
- 1.18 **Lessor** means the Corporation of the City of Adelaide;
- 1.19 **Lessor's Agents** means each of the Lessor's agents, contractors, officers, employees, subtenants and other persons claiming through or under the Lessor;
- 1.20 **Original Term** means the original term of this Lease set out in Item 2 of the Schedule;
- 1.21 **Outgoings** means the total of all amounts paid or payable or otherwise incurred by the Lessor in connection with the ownership, management, administration and operation of the Premises including:
  - 1.21.1 the reasonable cost of insurance taken out by the Lessor in respect of the Park Lands or Premises (including any plate glass insurance) and otherwise any reasonable cost of insuring all improvements or services;
  - 1.21.2 the reasonable cost of insuring the Lessor against public risk;
  - 1.21.3 the amount of any excess or deductible not paid or excluded under any insurance policy taken out by the Lessor;
  - 1.21.4 all reasonable costs of the Lessor in connection with the operation, supply, testing, maintenance, repair, replacement and renovation of services to or in the Premises provided from time to time;

- 1.21.5 all reasonable costs of the Lessor in connection with the maintenance, repair, replacement and renovation of car parking areas, pedestrian areas and landscaped areas within and around the Premises; and
- 1.21.6 all reasonable costs of the Lessor in connection with providing security in, for and around the Park Lands or Premises (including equipment, systems and security and other personnel).
- 1.22 **Park Lands** means the Adelaide Park Lands as defined in the Park Lands Act;
- 1.23 **Park Lands Act** means the *Adelaide Park Lands Act (SA) 2005*;
- 1.24 **Permitted Use** means the use described in Item 5 of the Schedule;
- 1.25 **Premises** means the whole of the Land and includes:
  - 1.25.1 the interior and exterior of all buildings on the Land;
  - 1.25.2 all the Lessor's fixtures, fittings, improvements, plant (including air conditioning plant if any), machinery, fire protection equipment, and chattels installed in or on the Premises;
  - 1.25.3 all the services to or in the Premises; and
  - 1.25.4 any alterations, additions, improvements, or modifications made to the Premises from time to time;
- 1.26 **Rates and Taxes** means all present and future rates, charges, levies, assessments, duty and charges of any Statutory Authority, other department or authority having the power to raise or levy any such amounts in respect of the use, ownership or occupation of the Land or Premises and includes water and sewer charges, council rates, emergency services levy and land tax (on a single holding basis);
- 1.27 **Recipient** and **Supplier** have the respective meanings ascribed to those terms in the GST Act;
- 1.28 **Rent** means the rent stated in Item 3 as reviewed from time to time;
- 1.29 **Review Date** means a Market Review Date, a CPI Review Date or a Fixed Review Date (as the context requires);
- 1.30 **Rules and Regulations** means the rules and regulations promulgated by the Lessor under this Lease;
- 1.31 **Schedule** means the schedule beginning on page 1 of this Lease;
- 1.32 **Services** means all electrical, water, sewerage, air conditioning, gas, telephone, facsimile and other like installations including all pipes, drains, cables, wires and conduits, in, on or to the Premises;
- 1.33 **Statutory Authority** means any public, municipal, government or semi government authority, body or department (including the Lessor in its separate capacity as a local government authority) or authorities created by or under Legislation;
- 1.34 **Statutory Requirements** means all relevant and applicable Legislation and all lawful conditions, requirements, notices and directives issued or applicable under any such Legislation;
- 1.35 **Supply** has the meaning attributed to that term in section 9-10 of the GST Act;
- 1.36 **Tax Invoice** has the same meaning it does in the GST Act;
- 1.37 **Term** means the Original Term and any extension or renewal of that term and any period during which the Lessee holds over or remains in occupation of the Premises;

- 1.38 **Valuer** means a qualified valuer (being an individual with the professional designation corresponding to valuer as designated by the Institute) who must be appointed to make a valuation or determination pursuant to this Lease and:
- 1.38.1 who must be appointed by the Lessor and the Lessee or (if they fail to agree on the appointee within seven (7) days of either the Lessor or the Lessee notifying the other of the requirement of such appointment) at the request of the Lessee or the Lessor by the person for the time being holding or acting in the office of President of the Institute;
  - 1.38.2 who has for at least five (5) consecutive years immediately prior to the date of such appointment been an accredited member of that Institute or body;
  - 1.38.3 who has practised as a land valuer as defined in the *Land Valuers Act 1994* in the valuation for rental purposes of property similar to the Premises for a period of not less than five (5) consecutive years immediately prior to such appointment;
  - 1.38.4 who must be deemed to act as an expert and not as an arbitrator;
  - 1.38.5 whose determination must be final and binding as between the Lessor and the Lessee; and
  - 1.38.6 whose costs and expenses of and incidental to such valuation or determination will be borne by the Lessee and the Lessor in equal shares unless otherwise provided in this Lease;
- 1.39 a reference to any Act includes all statutes regulations codes by-laws or ordinances and any notice demand order direction requirement or obligation under that Act (and vice versa) and unless otherwise provided in that Act includes all consolidations amendments re-enactments or replacements from time to time of that Act and a reference to "law" includes a reference to any Act and the common law;
- 1.40 words importing the singular embrace the plural and words importing one gender embrace the other genders and vice versa respectively;
- 1.41 any reference to a person includes a corporate body and vice versa;
- 1.42 all moneys payable by the Lessee to the Lessor under this Lease will be recoverable as a debt or as rent in arrears and if no date or time for payment is specified will be payable on demand;
- 1.43 'including' and similar expressions are not words of limitation;
- 1.44 anything which the Lessee is required to do under this Lease must be done at the cost in all things of the Lessee and to the reasonable satisfaction of the Lessor;
- 1.45 headings are for convenience of reference only and will not affect the construction or interpretation of this Lease;
- 1.46 in the event of any part of this Lease being or becoming void or unenforceable then that part must be severed from this Lease to the intent that all parts not void or unenforceable must remain in full force and effect and be unaffected by any such severance.

## 2. GRANT

The Lessor grants and the Lessee accepts a lease of the Premises for the Term subject to the provisions of this Lease.

## 3. LESSEE'S COVENANTS

The Lessee covenants and agrees with the Lessor throughout the Term:

**3.1 Rent**

The Lessee must pay the Rent at the times and in the manner stipulated in Item 3 of the Schedule and free from exchange, deduction, withholding, counterclaim or abatement:

- 3.1.1 to the Lessor or to such other person as the Lessor notifies the Lessee in writing from time to time; or
- 3.1.2 by direct bank transfer to the credit of a bank account nominated by the Lessor.

**3.2 Rates and Taxes**

- 3.2.1 The Lessee must pay or reimburse the Lessor all Rates and Taxes levied, assessed or charged in respect of the Premises or upon the owner or occupier of the Premises.
- 3.2.2 The Rates and Taxes must be adjusted between the Lessor and the Lessee as at the Commencement Date and the end or earlier termination date of this Lease.

**3.3 Outgoings**

- 3.3.1 The Lessee must pay or reimburse the Lessor all Outgoings levied, assessed or charged in respect of the Premises or upon the owner or occupier of the Premises.
- 3.3.2 The Outgoings shall be adjusted between the Lessor and the Lessee as at the Commencement Date and the end or termination date of this Lease.

**3.4 Lessee's Proportion**

If any of the Rates and Taxes or Outgoings are not separately assessed or charged in respect of the Premises, then the Lessee must pay a proportion as reasonably determined by the Lessor having regard to the benefit the Premises receives.

**3.5 Utilities**

- 3.5.1 The Lessee will pay when they are due for payment, all costs for the use of telephone, lights and other utilities and the consumption of electricity, gas, water and any and all other services and utilities supplied to or used from the Premises.
- 3.5.2 If there is no separate meter for recording or measuring the services and utilities consumed on or from the Premises, then the Lessee must, if required by the Lessor, install the necessary meters at its own cost.
- 3.5.3 Without limiting the generality of this clause 3.5, the Lessee will comply in all respects with the *Electricity (General) Regulations 1997* and any other applicable electricity laws.

**3.6 Costs**

The Lessee will pay on demand to the Lessor or as directed by the Lessor:

- 3.6.1 all of the Lessor's legal costs and the Lessor's other reasonable expenses incurred in connection with the negotiations for and preparation of this Lease;
- 3.6.2 all of the Lessor's legal costs and the Lessor's other reasonable expenses incurred in connection with any renewal or extension of this Lease;

- 3.6.3 all of the Lessor's reasonable costs of any guarantee, transfer, assignment, subletting or surrender of this Lease or in connection with any mortgage, charge or encumbrance of the interest of the Lessee under this Lease (whether consent is granted or lawfully refused) and any other incidental documents;
- 3.6.4 such amount as is reasonably estimated by the Lessor's architect or engineer when an application for consent to a proposed dealing is made by the Lessee as may be required to comply with the covenants and conditions contained in this Lease and on the part of the Lessee to be performed and observed including in particular but without limiting the generality those relating to the state of repair, cleanliness and painting of the Premises and including the costs of the architect or engineer to inspect the Premises;
- 3.6.5 the registration fees payable in respect of this Lease and any dealings with this Lease by the Lessee and all mortgagee consent and production fees; and
- 3.6.6 all moneys expended and expenses incurred by the Lessor in consequence of any default on the part of the Lessee in performing or observing any covenant condition or agreement on the part of the Lessee contained in this Lease or in exercising or enforcing (or attempting so to do) any rights or remedies of the Lessor under this Lease.

### 3.7 **Assignment, Subletting and Mortgaging**

- 3.7.1 The Lessee must not transfer or assign this Lease without the consent of the Lessor which consent may be withheld if:
  - (a) the proposed transferee or assignee ('**assignee**') proposes to change the use to which the Premises is put; or
  - (b) the proposed assignee is unlikely (in the Lessor's opinion) to be able to meet the financial obligations of the Lessee under the Lease; or
  - (c) the Lessor considers that the proposed assignee's business skills are inferior to those of the assignor; or
  - (d) the Lessee has not complied with the Lessor's procedural requirements for obtaining the Lessor's consent.
- 3.7.2 Where the Lessee is a company (other than a company the voting shares of which are listed on a recognised Stock Exchange in Australia) there shall be deemed a transfer or assignment of this Lease requiring the consent of the Lessor if:
  - (a) the issue of any share or transfer of the legal or beneficial ownership of any issued share of the Lessee or the ultimate holding company of the Lessee alters the effective control of the Lessee; or
  - (b) any change to the constitution of the Lessee varies the rights attaching to any of the issued shares of the Lessee.
- 3.7.3 The Lessee must not sublease, licence, grant a concession or part with possession, mortgage, charge or encumber this Lease or the Premises without the consent of the Lessor which may be withheld in its absolute discretion.
- 3.7.4 In respect of all cases of transfer, assignment, subletting or parting with possession by the Lessee, the Lessee:



- (a) is not released from its liabilities and obligations under this Lease for the balance of the Term; and
- (b) acknowledges that such transfer, assignment, subletting or parting with possession will not operate in any way to restrict, mitigate or release the responsibility and obligations of any guarantor from its guarantee of the Lessor's obligations.

3.7.5 If the Lessee requests that the Lessor consent to any transfer, assignment, sublease, licence, concession, mortgage, charge, encumbrance or parting with possession, the Lessee shall immediately on receipt of a request to do so from the Lessor:

- (a) pay all arrears of Rent and other money outstanding under this Lease and remedy all outstanding breaches and defaults;
- (b) pay such money as is reasonably estimated by the Lessor's consultants to be required for the Lessee to comply with any breach of the terms of this Lease including without limitation those relating to the state of repair and cleanliness and painting of the Premises including the reasonable costs of such consultants in inspecting the Premises;
- (c) submit a true copy of all agreements to be entered into in respect of any proposed dealing with this Lease or the Premises and evidence satisfactory to the Lessor that the proposed assignee or subtenant is respectable, responsible, solvent and suitable and information reasonably required by the Lessor about the financial standing and business experience of the proposed assignee or subtenant;
- (d) if the proposed assignee or subtenant is a trustee of a Trust, submit a copy of the instrument under which such Trust was constituted and the full names, addresses and occupations of the beneficiaries of such Trust; and
- (e) pay to the Lessor or its solicitors the reasonable costs of and incidental to the enquiries concerning the proposed dealing or the persons concerned in such dealing and of the perusal, preparation and stamping of the documents reasonably deemed necessary by the Lessor,

and if such consent is given, the Lessee will ensure that prior to the date of any transfer or assignment the proposed assignee:

- (f) enters into a direct covenant with the Lessor to observe the terms of this Lease; and
- (g) furnishes such guarantees of the performance of such person's obligations under this Lease as the Lessor may reasonably require.

### 3.8 Permitted Use

3.8.1 The Lessee must use the Premises only for the Permitted Use and not use the Premises nor permit the same to be used for any other use.

3.8.2 The Lessee must not:

- (a) do or permit to be done on the Premises anything which may be or become unlawful or immoral or cause an annoyance or nuisance or damage to the Lessor or to any other person;
- (b) sleep or suffer anyone to sleep upon the Premises;

- (c) use or permit or suffer to be used the Premises or any part of the same for residential purposes;
- (d) use or allow the Premises to be used for the purpose of an auction without the Lessor's consent;
- (e) serve, sell, provide, consume or allow consumption of alcohol or alcoholic beverages on or from the Premises without the Lessor's consent; or
- (f) undertake or allow activities on or from the Premises that are offensive, dangerous or may bring any discredit upon the Lessor.

3.8.3 The Lessee must:

- (a) promptly obtain, keep current and comply with all consents, approvals and licences from all relevant Statutory Authorities or other persons necessary or incidental to the use of the Premises for the Permitted Use and the provisions of this Lease; and
- (b) provide the Lessor with copies of all approvals, consents and licences immediately after being obtained by the Lessee.

**3.9 Maintenance, Repair and Painting**

3.9.1 The Lessee must during the Term maintain, repair, replace, clean and keep the Premises including the interior and exterior of the Premises, any improvements and all the Lessor's partitions, fixtures, fittings, plant and equipment in good and substantial repair, order and condition and where appropriate in good working order (including entering into and keeping current any servicing or maintenance contracts reasonably required by the Lessor) provided that the Lessee will be under no obligation to make good damage by fair wear and tear (except as regards light globes and fluorescent tubes).

3.9.2 The Lessee must maintain the floor coverings in the Premises (whether installed by the Lessor or the Lessee) in good condition at all times and where the Lessee causes damage or excessive wear to the floor coverings the Lessee must replace the floor coverings to the reasonable satisfaction of the Lessor with new floor coverings of a quality and standard equivalent to or better than that of the floor coverings in the Premises at the Commencement Date or date of installation of the damaged or worn floor coverings (whichever is the later).

3.9.3 The Lessee must not nor will the Lessee permit the Lessee's Agents to:

- (a) cut, injure, damage, deface or obstruct any convenience appliance plant or equipment in the Premises; or
- (b) mark, drill or deface the walls, ceilings, columns, floor or other parts of the Premises,

unless the Lessor's consent is first obtained and then only in accordance with specifications approved by the Lessor.

3.9.4 The Lessee must make good any breakage, defect or damage to the Premises caused or contributed to by the Lessee or any of the Lessee's Agents (and the Lessee must obtain the Lessor's consent prior to undertaking such make good work).

- 3.9.5 The Lessee must maintain in good and substantial repair all paved and/or bituminised walkways, driveways and car park areas comprised in the Premises and yield up the same in a like condition (fair wear and tear excepted) at the expiration or sooner determination of this Lease.
- 3.9.6 The Lessee must at the end of every five (5) years during the Term and in any event immediately prior to the expiration of the Term or the surrender of this Lease or within seven (7) days of any sooner determination of this Lease in:
- (a) a proper and workmanlike manner;
  - (b) colours and in accordance with specifications approved by the Lessor; and
  - (c) accordance with any heritage requirements,
- paint, paper or otherwise appropriately treat, or cause to be painted, papered or appropriately treated, all such parts of the Premises (both the interior and exterior) as are usually painted, papered or treated.
- 3.9.7 If the Lessee fails to comply with its obligation under clause 3.9.6 then the Lessor may on giving fourteen (14) days' notice to the Lessee of the Lessor's intention to do so undertake such work through the services of its contractors or nominees and any money incurred by the Lessor in the exercise of such election must be paid to the Lessor by the Lessee.
- 3.9.8 If the Lessee requires the Lessor to carry out any works which are the responsibility of the Lessee under this clause 3.9 then:
- (a) the Lessor 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
  - (b) the Lessee must pay to the Lessor all the Lessor's reasonable costs and expenses in executing such works.

### **3.10 Yielding Up**

- 3.10.1 At or immediately before the expiration of the Term or earlier surrender or termination of this Lease the Lessee must:
- (a) peaceably surrender and yield up possession of the Premises in clean and good and substantial repair, order and condition and where appropriate in good working order (fair wear and tear excepted); and
  - (b) surrender all keys for the Premises to the Lessor.
- 3.10.2 At or immediately before the expiration of the Term or earlier surrender or termination of this Lease the Lessee:
- (a) may, and must if required to do so by the Lessor, remove all of the Lessee's fixtures, fittings, plant and equipment brought on to the Premises including without limitation any such items or fit-out of a previous occupier of the Premises even if the Lessee does not own such items or fit-out, and in carrying out such removal the Lessee must minimise the damage to the Premises and the Park Lands and immediately make good any resulting damage;
  - (b) if required to do so by the Lessor, must remove the alterations and additions in and to the Premises effected by or on behalf of or at the request of the Lessee or a previous occupier and

reinstate the Premises to their condition prior to the fit-out of the Premises for the Lessee (or if the Lessee acquires ownership or possession of the fit-out from any previous occupier of the Premises then to their condition prior to the fit-out by the previous occupier) and in carrying out such removal and reinstatement the Lessee must minimise the damage to the Premises and the Park Lands and immediately make good any resulting damage; and

- (c) must comply with the Lessor's reasonable requirements in respect of such removal and reinstatement works provided that the Lessor may elect to carry out such removal and reinstatement works at the Lessee's cost.

### 3.11 **Air-conditioning**

3.11.1 Where any plant, machinery or equipment for heating, cooling or circulating air or any related services or controls or appliances ('**Air-conditioning Plant**') are provided to, installed in or service the Premises the Lessee must:

- (a) pay all costs and expenses of and incidental to the operation, servicing, maintenance, replacement and repair of the Air-conditioning Plant; and
- (b) if required by the Lessor, enter into a service and maintenance contract in respect of that Air-conditioning Plant which contract must be first approved by the Lessor (such approval not to be unreasonably withheld).

3.11.2 The Lessee must comply with and observe the reasonable requirements of the Lessor in respect of the Air-conditioning Plant.

3.11.3 To the maximum extent permitted by law the Lessor will be under no liability to the Lessee in respect of the Lessor's inability or failure to operate, service, maintain, replace or repair the Air-conditioning Plant and the Lessee acknowledges that the Lessor does not warrant that the Air-conditioning Plant (if any) is suitable or adequate for the business to be conducted in the Premises by the Lessee.

### 3.12 **Cleaning**

Without limiting the generality of the previous clauses the Lessee must at the Lessee's expense:

- 3.12.1 cause the Premises to be cleaned regularly in a proper and workmanlike manner and kept clean and free from dirt, rubbish and graffiti;
- 3.12.2 keep and maintain in good order repair and condition all fittings, plant, furnishings, installations and equipment of the Lessee in the Premises to the extent necessary to prevent any hazard to or deterioration in the condition of the Premises;
- 3.12.3 store and keep all waste materials and garbage in proper receptacles and arrange for the regular removal of it from the Premises;
- 3.12.4 keep the Premises and the surrounding area free from vermin, insects and other pests; and
- 3.12.5 not cause any part of the Park Lands to be left untidy or in an unclean state or condition.

**3.13 Damage**

- 3.13.1 The Lessee must make good any breakage, defect or damage to the Premises or any of the Lessor's fixtures and fittings in or on the Premises or any facility or appurtenance of the Premises occasioned by want of care misuse or abuse on the part of the Lessee or the Lessee's Agents or otherwise occasioned by any breach or default of the Lessee under this Lease or by the use of the Premises by the Lessee notwithstanding that such use of the Premises may be within the scope of the Permitted Use.
- 3.13.2 The Lessee must at the cost of the Lessee immediately replace all damaged or worn out light globes and fluorescent tubes.
- 3.13.3 The Lessee must immediately repair and replace any broken glass in the Premises (including external windows), with glass of the same or similar quality.

**3.14 Statutory Requirements**

The Lessee must at its own cost comply with all Statutory Requirements and reasonable directives of the Lessor relating to:

- 3.14.1 the Lessee's use and occupation of the Premises; and
- 3.14.2 the nature of the Permitted Use conducted on the Premises by the Lessee.

**3.15 Security**

- 3.15.1 The Lessee must use the Lessee's best endeavours to protect and keep safe the Premises and any property contained in it from theft or vandalism and to keep all doors, windows and other openings closed and locked when the Premises are not in use.
- 3.15.2 The Lessee must not without the consent of the Lessor (which consent must not be unreasonably withheld) install any security equipment or system in or to the Premises nor to alter or modify any existing security equipment or system.
- 3.15.3 The Lessee must pay to the Lessor all charges for any security alarm callout to or affecting the Premises.

**3.16 Use of services**

- 3.16.1 The Lessee will ensure that the services are used responsibly and in accordance with any reasonable directions of the Lessor.
- 3.16.2 The Lessee must immediately repair or correct any damage or malfunction caused to the services as a result of misuse or abuse by the Lessee.

**3.17 Notice of Defects**

The Lessee must give to the Lessor prompt notice in writing of any circumstances including any accident to or defect or want of repair in any service to or fittings in the Premises which the Lessee should reasonably be aware might cause any danger, risk or hazard to the Premises or any person in the Premises.

**3.18 Signs**

- 3.18.1 The Lessee must not erect, display, affix or exhibit on or to the Premises any sign, advertisement or notice which is visible from outside the Premises except signs which are approved by the Lessor and comply with any relevant Statutory Requirements (including any

requirement of the Lessor in its separate capacity as statutory authority).

3.18.2 The Lessee must not without the consent of the Lessor erect or place inside or outside the Premises any radio or television or other telecommunications aerial or antennae or any loudspeakers, film screens, media equipment or similar devices or equipment which may be heard or seen from outside the Premises.

3.18.3 Upon vacating the Premises the Lessee must remove any signs, names, advertisements or notices erected, displayed, painted, affixed or exhibited upon, to, inside or outside the Premises by or on behalf of the Lessee and the Lessee must make good any damage or disfigurements caused by reason of such erection or removal.

### 3.19 Alterations and Additions

3.19.1 The Lessee must not:

- (a) make any alteration or addition in or to the Premises or any part of the same without the consent of the Lessor; or
- (b) install or alter any partitioning work, fixed equipment or other fixed installation in or on the Premises without the consent of the Lessor which consent must not be unreasonably withheld.

3.19.2 Where consent is given by the Lessor under clause 3.19.1:

- (a) such alteration, addition or installation must be done or made in accordance with the approval so given, in a proper and workmanlike manner and in accordance with all Statutory Requirements;
- (b) any reasonable fees payable to the Lessor's architects for approval and inspection must be paid by the Lessee on demand;
- (c) the materials and design must first be approved by the Lessor or its consultants; and
- (d) the Lessee must obtain and keep current and ensure that its contractors obtain and keep current such insurance of the Premises and the works and of the Lessee and its contractors and workers as the Lessor reasonably requires.

3.19.3 All partitioning work, fixed equipment, fixed installation, alteration or addition installed by the Lessee:

- (a) will be and remain the property of the Lessee; and
- (b) must be maintained by the Lessee who will be responsible for the repair and (in the case of any plant or equipment) running costs.

### 3.20 Heavy Objects and Dangerous Substances

3.20.1 The Lessee must not without the consent of the Lessor bring onto the Premises:

- (a) any heavy machinery or other plant or equipment of such nature or size as to cause or (in the reasonable opinion of the Lessor) be likely to cause any structural or other damage to the Premises or Park Lands;
- (b) any plant or machinery from which may emanate any noise, vibration, noisome or noxious odour, fume or gas that could

pervade the Premises or escape from the Premises to the discernible notice of any person outside the Premises;

- (c) any dangerous, noxious, odorous, toxic, volatile, explosive or inflammable substance, compound or pollutant whether in solid, liquid, gaseous or other form other than such substances normally used in the conduct of the Permitted Use provided that such substances or compounds are handled and stored in compliance with all applicable laws; or
- (d) any plant or machinery which may overload the electrical services to the Premises.

3.20.2 Before bringing any heavy machinery or other plant or equipment onto the Premises the Lessee must inform the Lessor of the Lessee's intention so to do and the Lessor may direct the routing, installation and location of all such machinery, plant and equipment and the Lessee must observe and comply with all such directions.

### 3.21 **Liquor Licence**

3.21.1 The Lessee will not do anything or fail to do anything which will or may result in any licences (together, the **Licence**) issued under the *Liquor Licensing Act 1997* as amended, or any other legislation that is enacted to replace such legislation (the **Act**) in respect of the Premises or of the business to which the Licence relates not being renewed or being suspended, revoked or forfeited.

3.21.2 The Lessee will not without the prior written consent of the Lessor transfer, sell, or remove to other premises, or offer to transfer, sell, or remove to other premises, the Licence.

3.21.3 The Lessee will not do anything or fail to do anything that will or may result in a change to the conditions of the Licence, and, without limiting this clause, the Lessee will not apply to the Licensing Court of South Australia, the Commissioner for Consumer Affairs, Liquor and Gambling, or any other relevant authority (**Licensing Authority**) to decrease or restrict the hours of trading permitted under a Licence.

3.21.4 The Lessee will use its best endeavours to maintain and expand the business conducted on the Premises to which the Licence relates and to preserve and improve the character of the business.

3.21.5 Without limiting any other clause in this Lease, the Lessee will at the Lessee's own cost and expense at all times comply with and carry out:

- (a) the requirements of the Act for the time being in force in the State of South Australia; and
- (b) all directions and requirements of the Licensing Authority or any inspector, officer or person appointed pursuant to the provisions of the Act relating to the Premises or the Licence,

(**Requirements**) and in default of the Lessee so doing it will be lawful for, but not obligatory upon, the Lessor to enter into and upon the Premises and to comply with or carry out such Requirements.

3.21.6 Further to clause 3.21.5:

- (a) all moneys, costs, charges and expenses incurred by the Lessor under clause 3.21.5 will be payable by the Lessee immediately upon demand of the Lessor;
- (b) such sum or sums will be in addition to the Rent and other moneys reserved to the Lessor by virtue of this Lease;

- (c) any work done by the Lessee pursuant to any such Requirements will be carried out to the entire satisfaction of and as may be required by the Lessor or the Lessor's architect;
  - (d) the provisions of clause 3.19 will apply to such work.
- 3.21.7 The Lessee will renew the Licence as and when required from time to time.
- 3.21.8 When this Lease expires, or if this Lease is surrendered or terminated for any reason, the Lessee will, at no cost to the Lessor:
  - (a) sign and give such notice or notices for transfer of the Licence as may be required or desired by the Lessor;
  - (b) allow such notice or notices for transfer of the Licence in respect of the Premises as may be required by law to be affixed to the Premises and remain so affixed during such time or times as necessary or expedient;
  - (c) generally do or cause to be done all such further acts matters and things as necessary to enable the Lessor or any person authorised by the Lessor to obtain the Licence;
  - (d) upon demand by the Lessor, transfer and deliver up to the Lessor and/or its nominee or nominees the Licence.
- 3.21.9 During the Term the Lessee will supply to the Lessor within 7 days after forwarding the same to the Licensing Authority a copy of every statutory declaration and every other form, letter or application required to be forwarded to or lodged with the Licensing Authority pursuant to the Act.
- 3.21.10 The Lessee irrevocably authorises the Lessor and the Lessor's agents to inspect and take copies of or extracts from any and every such declaration, form letter or application.
- 3.21.11 The Lessee will:
  - (a) punctually and in the normal course of trading pay all moneys due and owing or unpaid by the Lessee to all suppliers with whom the Lessee from time to time deals for goods purchased by the Lessee with respect to the operation of the business upon the Premises; and
  - (b) pay all instalments of the Licence or other fees payable under the Act on the day or days fixed for payment of the same.
- 3.21.12 If at any time the Lessee or any manager or employee of the Lessee receives or is served with any summons, complaint or any legal process or notice (**Legal Notice**) issued or given by virtue of the Act or any other Act for the time being in force relating in any respect to the Premises or to the Licence or the business conducted on the Premises the Lessee:
  - (a) must immediately produce the same and give to the Lessor full and true information concerning the matter in issue in all respects as the Lessor may require; and
  - (b) will not agree or consent to any matter or thing contained in the Legal Notice or take any action without first obtaining the consent in writing of the Lessor or the Lessor's solicitor or other agent.
- 3.21.13 The Lessor will upon the service of such Legal Notice, and whether or not notice of such Legal Notice has been given to the Lessor by the



Lessee, be entitled to appear in the name and on behalf of the Lessee and at the cost of the Lessee by solicitor or by counsel instructed by the Lessor.

- 3.21.14 Notwithstanding that the Lessee may either personally or by counsel also appear in such matter or proceedings the Lessor at the cost of the Lessee may appear in and appeal against any decision of any court or other authority in such manner as the Lessor or his solicitor or counsel in his absolute discretion may think fit.
- 3.21.15 The costs and expenses incurred by the Lessor must immediately be paid by the Lessee or if paid by the Lessor are recoverable immediately on demand by the Lessor from the Lessee.
- 3.21.16 For all the purposes of this clause the Lessee irrevocably nominates, constitutes and appoints the Lessor as the attorney and agent of the Lessee with power to appoint substitutes.

### **3.22 Access of Lessor**

- 3.22.1 The Lessee permits the Lessor and all persons authorised by the Lessor and the Lessor's Agents at all reasonable times upon giving to the Lessee 3 days' notice (except in the case of emergency when no notice will be required) to enter upon the Premises to:
  - (a) view the state of its repair;
  - (b) to do repairs to the Park Lands or other works which cannot reasonably be done unless the Lessor enters the Premises;
  - (c) to remedy any breach in accordance with clause 5.13;
  - (d) to do anything the Lessor must or may do under this Lease or under any Legislation;
  - (e) carry out repairs, renovations, maintenance, modifications, extensions, alterations or other works to the Premises or to any part of the Premises or the Park Lands deemed necessary or desirable by the Lessor;
  - (f) install, use, maintain, repair, alter, and interrupt the services; and
  - (g) close (temporarily or permanently) and restrict access to the Park Lands
- 3.22.2 In the course of carrying out any repairs, renovations, maintenance, modifications, extensions or alterations to the Premises, the Park Lands or to any part of the Premises or Park Lands, pursuant to this clause the Lessor must use reasonable endeavours to minimise interference with the Lessee's use and occupation of the Premises.
- 3.22.3 The Lessee must not make any claim or commence or maintain any suit or action against the Lessor for breach of the covenant contained in clause 4.1 or otherwise in consequence of such entry or in execution of any of the works contemplated by this clause.

### **3.23 Rules and Regulations**

The Lessee will observe the Rules and Regulations and any failure by the Lessee to observe the Rules and Regulations will constitute a breach of the terms of this Lease.

### **3.24 Plate Glass Insurance**

The Lessee will immediately insure and keep insured against breakage all the plate glass in the Premises for its replacement value at the Lessee's expense.

**3.25 Fixtures Fittings and Stock Insurance**

The Lessee must effect and keep current a policy insuring the Lessor's fixtures, fittings, equipment and signs in or on the Premises, and the Lessee's fixtures, fittings, equipment and where applicable stock and signs, to their full insurable value from time to time against loss or damage by fire, burglary, theft, lightning, explosion, tempest, riot, impact of vehicles, earthquake, damage by aircraft or articles dropped from aircraft, water, damage, flood and rain water damage and such other risks as the Lessor specifies from time to time.

**3.26 Public Liability Insurance**

3.26.1 The Lessee must immediately effect and keep current at all times in respect of the Premises a public risk insurance policy for an amount of not less than \$20,000,000 (or such other amount as the Lessor may reasonably require and notify the Lessee in writing) per claim.

**3.27 Insurance Generally**

3.27.1 The Lessee will:

- (a) pay to the Lessor immediately upon demand all extra amounts paid or payable by the Lessor under any insurance policies relating to any accident, incident or claim caused or contributed to by the Lessee or any of the Lessee's Agents or by the Lessee's use and occupation of the Premises; and
- (b) where appropriate, expend all moneys received under any insurances required to be taken out pursuant to this Lease in reinstating the insured items.

3.27.2 On or before the Commencement Date the Lessee must give to the Lessor certificates evidencing the currency of the policies required under this Lease. During the Term the Lessee must:

- (a) pay each premium before its due date;
- (b) provide the Lessor certificates of currency each year when the policies are renewed and at other times reasonably requested by the Lessor;
- (c) not allow any insurance policy to lapse or vary without the Lessor's consent; and
- (d) notify the Lessor immediately if a policy is cancelled or if an event occurs which could prejudice or give rise to a claim under a policy.

3.27.3 All insurances required of the Lessee under this Lease must:

- (a) be with an insurer and on terms approved by the Lessor;
- (b) be in the name of the Lessee and note the interest of the Lessor;
- (c) have no limit on the number of claims that can be made under it; and
- (d) cover events occurring during the policy's currency regardless of when claims are made.

**3.28 Not to Vitate Lessor's Insurance**

The Lessee must not at any time do or permit or suffer to be done any act, matter or thing in or on the Premises whereby any insurance in respect of the Premises may be vitiated or rendered void or voidable or whereby the rate of premium on any insurance will be liable to be increased.

### **3.29 Indemnities**

3.29.1 The Lessee indemnifies the Lessor and the Lessor's Agents from and against all and any actions, claims, demands, losses, damages, costs and expenses in relation to or arising from:

- (a) the negligent use, misuse, abuse or neglect of the services and facilities to or in the Premises by the Lessee or any of the Lessee's Agents;
- (b) overflow or leakage of water (including rain water) or any other harmful agent into or from the Premises;
- (c) the death of or injury to any person or loss of or damage to the property of any person caused or contributed to by the use of the Premises by the Lessee or the Lessee's Agents notwithstanding that such use of the Premises may be within the scope of the Permitted Use;
- (d) any cause relating to the Premises, any property or any person within or outside the Premises occasioned or contributed to by any act, omission, neglect, breach, or default of the Lessee or any of the Lessee's Agents or by the Lessee's use and occupation of the Premises;
- (e) the Lessor, without fault by the Lessor, being made a party to any litigation commenced by or against the Lessee (other than litigation between the Lessor and the Lessee) arising directly or indirectly out of the Lessee's occupancy of the Premises,

except to the extent that the action, claim, demand, loss, damage, cost and expense arises from the negligence of the person seeking such indemnity.

3.29.2 The Lessee indemnifies the Lessor against all reasonable fees, costs, liabilities and expenses incurred by it in the exercise or attempted exercise of any of the rights, authorities, powers or remedies which are exercisable by the Lessor pursuant to this Lease.

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

### **3.30 Release**

3.30.1 The Lessee occupies, uses and keeps the Premises at the risk of the Lessee.

3.30.2 To the full extent permitted by law the Lessee releases the Lessor and the Lessor's Agents from all and any actions, liabilities, claims, demands and damages of every kind for any accident, damage, loss, injury or death occurring on the Premises except to the extent that they are caused by the negligence of the Lessor or any of the Lessor's Agents.

3.30.3 The Lessee must not make any claim or commence or maintain any suit or action against the Lessor or any of the Lessor's Agents in respect of:

- (a) loss of or damage to the Lessee's stock, fixtures or fittings or other property;
- (b) claims, demands and damages resulting from or contributed to by any accident, damage or injury occurring in on or about the Premises; and

- (c) loss or damage including without limitation direct, indirect, consequential and economic loss suffered as a result of or contributed to by:
  - (i) flooding of the Premises; or
  - (ii) blockage of any sewers, waste drains, gutters or down pipes; or
  - (iii) any malfunction, failure to function or interruption of or to the water, gas, electricity, telephone, facsimile, air conditioning, fire prevention, fire safety, lifts, escalators and other systems and other services situated in or serving the Premises,

except to the extent caused or contributed to by the negligence of the Lessor or any of the Lessor's Agents.

### **3.31 Reletting**

3.31.1 The Lessee permits the Lessor or Lessor's Agent:

- (a) at any time or times not more than six months prior to the expiration or sooner determination of this Lease to place "To Let" notices outside or inside the Premises;
- (b) at any time to place "For Sale" signs in conspicuous places outside or inside the Premises; and
- (c) (at the Lessor's discretion) to enter the Premises at all reasonable times for the purpose of erecting and exhibiting the same and for the purpose of showing prospective tenants or purchasers through the Premises.

3.31.2 The Lessee must not obstruct or impede or attempt to obstruct or impede the re-letting of the Premises and must comply with any reasonable requests by the Lessor in relation to the process of re-letting the Premises.

### **3.32 Fire Precautions**

3.32.1 The Lessee must:

- (a) take such precautions against fire on and in respect of the Premises as are or may from time to time be required under or pursuant to any present and future laws or by any Statutory Authority having jurisdiction in relation to the Premises; and
- (b) do and execute or abstain from doing or executing all such other acts, matters and things in relation to fire safety or fire prevention as are or may be directed or required (whether of the owner or occupier of the Premises) by any person or entity having jurisdiction in relation to the Premises.

3.32.2 The Lessee must comply with sprinkler and fire alarm laws in respect of the sprinkler and fire alarm systems installed in or about the Premises and pay to the Lessor the cost of any alterations or additions to the sprinkler or fire alarm systems which the Lessor may be required to make by reason of the non-compliance by the Lessee with such laws.

3.32.3 The Lessee must perform and observe and ensure that the Lessee's Agents perform and observe all necessary and proper fire drills and emergency evacuation procedures.

- 3.32.4 The Lessee must pay to the Lessor all charges imposed on the Lessor by the South Australian Fire Department or its successor for any callout to or affecting the Premises.

**3.33 Agreement to Lease**

If the Lease is entered into pursuant to an agreement to lease the Lessee must observe and perform all of the terms and conditions to be observed or performed by the Lessee under such agreement which remain outstanding as at the Commencement Date and any failure, neglect or default by the Lessee to observe or perform any such term or condition will constitute a breach of this Lease.

**3.34 Superior or Concurrent Interest**

The Lessee must:

- 3.34.1 permit any person having any interest in the Park Lands superior or concurrent with the Lessor to exercise the Lessor's powers under this Lease and their lawful rights in relation to the Premises; and
- 3.34.2 if any person other than the Lessor becomes entitled to receive money payable under this Lease either by operation of law or otherwise to enter into an agreement with that person at the Lessor's expense in the form and containing provisions reasonably required by the Lessor.

**3.35 Redevelopment**

If at any time during the Term the Lessor in its absolute discretion desires to redevelop the Premises, or the Lessor requires the Premises for demolition or to make structural alterations or additions, or for any reason connected with the Lessor's proposed redevelopment, then:

- 3.35.1 the Lessor must provide the Lessee with reasonable details of the proposed redevelopment and (if applicable) proposed demolition sufficient to indicate a genuine proposal to demolish or redevelop the Premises; and
- 3.35.2 the Lessor may terminate this Lease with effect from any time on giving at least six (6) months prior notice to the Lessee specifying the date on which the Lessor so requires the Premises ('**Termination Date**'),

and if the Lessor gives such notice then:

- 3.35.3 this Lease will automatically terminate on the Termination Date by virtue of the operation of this clause;
- 3.35.4 not less than fourteen (14) days prior to the Termination Date the Lessee must execute and deliver to the Lessor a surrender of this Lease by mutual consent and without the payment of any monetary or other consideration and if this Lease is registered deliver to the Lessor the Lessee's copy of this Lease;
- 3.35.5 by or on the Termination Date the Lessee must vacate the Premises in all respects in compliance with the terms and conditions of this Lease; and
- 3.35.6 if this Lease is terminated pursuant to this clause, the Lessee will not be entitled to any compensation or damages from the Lessor on any account whatsoever by reason of such termination.

**3.36 No Caveat**

The Lessee must not lodge or cause or permit to be lodged any absolute caveat on the Certificate of Title for the Land or the Park Lands and indemnifies the

Lessor against and in respect of all and any actions, claims, demands, losses, damages, costs and expenses which the Lessor may incur in respect of the lodgement, removal or withdrawal of any such caveat.

### 3.37 **Guarantee**

- 3.37.1 The Lessee must procure, contemporaneously with the execution of this Lease by the Lessee the execution of a Deed of Guarantee and Indemnity of the performance by the Lessee of the terms of this Lease for the benefit of the Lessor from such persons and in such form as the Lessor reasonably requires.
- 3.37.2 In the event of the death of any guarantor named in the Deed of Guarantee and Indemnity executed pursuant to clause 2.36.1 of this Lease:
- (a) the Lessee must give notice of the death to the Lessor within 14 days of the death of such person; and
  - (b) if so required by the Lessor, the Lessee must, at its expense, procure within 28 days of the giving of such notice some other person or firm of high financial standing acceptable to the Lessor to execute a Deed of Guarantee and Indemnity for the performance by the Lessee of the terms of this Lease for the benefit of the Lessor in such form as the Lessor reasonably requires.

### 3.38 **Bank Guarantee**

- 3.38.1 The Lessee must deliver to the Lessor on or before execution of this Lease by the Lessee an enforceable irrevocable and continuing bank guarantee without an expiry date ('**Bank Guarantee**') in favour of the Lessor given by an Australian domiciled bank carrying on business in South Australia ('**Bank**') whereby the Bank undertakes unconditionally and on terms satisfactory to the Lessor to pay to the Lessor on demand any sum demanded by the Lessor but not exceeding an amount equal to the sum of ### (###) monthly instalments of the annual Rent plus GST as at the date of such demand (but disregarding any rent incentives or rebates) ('**Guaranteed Amount**').
- 3.38.2 The Bank Guarantee must expressly state that it is to secure the Lessee's obligations under this Lease and must not make reference to rent or a rental guarantee or be referred to as a deposit or security bond.
- 3.38.3 The Lessee must, if requested by the Lessor, provide a replacement Bank Guarantee that complies with clause 2.37.1 on each occasion that the Rent is increased under this Lease.
- 3.38.4 The Lessor may make demand on the Bank Guarantee or any part of it if the Lessee fails to remedy any breach or default of the Lessee's obligations under this Lease.
- 3.38.5 If the Lessor makes such demand or if the amount of the Bank Guarantee is less than the Guaranteed Amount the Lessee must within seven (7) days of the Lessor giving the Lessee notice to such effect provide the Lessor with a further or replacement Bank Guarantee for an amount necessary to ensure that the Bank Guarantee is maintained for the Guaranteed Amount on the terms set out in this clause.
- 3.38.6 The Lessee will not be entitled to re-delivery nor to request re-delivery of the Bank Guarantee until three (3) months after the expiration of the Term provided that after such time the Lessor may refuse to deliver

up the Bank Guarantee if the Lessor reasonably considers that there may be contingent obligations under this Lease yet to mature and to be performed by the Lessee at the time of the request to the Lessor.

- 3.38.7 The Lessee irrevocably agrees that the Bank must act immediately on the Lessor's demand without reference to the Lessee and despite notice from the Lessee not to pay any amount to the Lessor.
- 3.38.8 Acceptance by the Lessor of the Bank Guarantee will not operate to waive the Lessee's breach or default.
- 3.38.9 The provisions of this clause do not in any way limit restrict or prejudice the rights and remedies of the Lessor in respect of the Lessee's breach or default.

### 3.39 **Lessee's Own Enquiries**

- 3.39.1 The Lessee has made its own enquiries and investigations into the nature of the Premises and does not rely on any representations or conduct (whether express or implied, oral or written) by the Lessor.
- 3.39.2 The Lessee acknowledges that no representation has been made to the Lessee regarding:
  - (a) the suitability of the Premises for any particular purpose;
  - (b) the profitability of any business conducted or to be conducted from the Premises; and
  - (c) the tenancy mix from time to time in the vicinity of the Premises.
- 3.39.3 The Lessor does not warrant that the Premises will for the duration of this Lease be structurally or otherwise suitable for the business to be conducted in the Premises by the Lessee or for any other purpose.

### 3.40 **Park Lands**

The Lessee must comply with the approved designs, plans, guidelines and master plans from time to time of the Lessor and APLA with respect to the use and occupation of the Premises (being part of the Park Lands).

### 3.41 **Environment**

- 3.41.1 The Lessee must not do anything that causes Contamination or pollution or is likely to cause Contamination or pollution to the Premises, the Park Lands or the Environment in contravention of any Environmental Law.
- 3.41.2 The Lessee must perform at its cost any environmental remediation repair or works required as a result of a breach by the Lessee of this clause.
- 3.41.3 Without limiting clauses 3.29 and 3.30, the Lessee indemnifies the Lessor against any costs, action, proceedings, demands, damages or losses (including any duty or obligation to make payment or carry out works) incurred as a result of or contributed to by any breach of an Environmental Law by the Lessee.
- 3.41.4 This clause 3.41 survives termination or the expiration of this Lease.

### 3.42 **Events**

- 3.42.1 The Lessee acknowledges and agrees that (due to its location in the Park Lands) the Premises may not be available for use and occupation on occasion as a result of public events to be held in the Park Lands (**Events**).

3.42.2 The Lessee may not make any claim against the Lessor arising from or in connection with any Event or the Premises not being available for the Lessee's use and occupation during any Events.

3.42.3 The Lessee will not be required to make any payments on account of instalments of Rent for any period the Premises are not available for use by the Lessee due to an Event.

**3.43 Lessor Works**

The Lessee acknowledges and agrees that the Lessor shall be entitled at any time during the Term to undertake such works adjacent to or nearby the Premises in the performance of its statutory duties and obligations as the Lessor shall deem necessary or desirable and the Lessee further covenants that any such works will not constitute a breach of the Lessor's obligations under clause 4.1 and shall not constitute a derogation from the lease hereby granted.

**4. LESSOR COVENANTS WITH THE LESSEE**

The Lessor covenants and agrees with the Lessee throughout the Term:

**4.1 Quiet Possession**

Subject to the Lessor's rights under this Lease and the Lessee paying the Rent and duly and punctually observing and performing the terms of this Lease, the Lessee may peaceably possess and enjoy the Premises for the Term without any interruption or disturbance from the Lessor or any other person or persons lawfully claiming by from or under the Lessor.

**4.2 Powers in respect of the River Torrens Weir**

Without limiting any other provision of this Lease, the parties agree that:

4.2.1 subject to the Lessor's compliance with clause 4.2.2, the exercise by the Lessor of any statutory power to undertake works on the River Torrens Weir (**River**) or any land adjoining the River (including without limitation draining the River) will not constitute a breach of this Lease by the Lessor; and

4.2.2 in exercising any such statutory power, the Lessor must:

- (a) not unreasonably delay completion of the relevant works; and
- (b) where the Lessor intends to drain the River, give the Lessee two (2) months' prior notice (except in the case of an emergency, where no notice is required).

**5. ESSENTIAL TERMS, RE-ENTRY, BREACH, DAMAGES**

**5.1 Essential Terms**

5.1.1 Clauses 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 3.8, 3.9, 3.10, 3.11, 3.14, 3.17, 3.19, 3.20, 3.21, 3.24, 3.25, 3.26, 3.29, 3.30, 3.32, 3.37, 3.38 and 3.41 are of a fundamental character and are essential terms of this Lease.

5.1.2 The acceptance by the Lessor of any arrears or of any late payment of Rent will not constitute a waiver of the essentiality of the Lessee's obligation to pay Rent in respect of those arrears, the late payments or in respect of the Lessee's continuing obligation to pay Rent during the Term.

**5.2 Termination and Re-Entry**

If:

5.2.1 the Rent or any part of it is unpaid for a space of 7 days after the due date in this Lease (although no formal or legal demand has been made for it);



- 5.2.2 the Lessee commits, permits or suffers to occur any breach or default in the due and punctual observance and performance of any of the covenants, obligations and provisions of this Lease;
- 5.2.3 (in the event the Lessee is a Company):
- (a) an order is made or a resolution is effectively passed for the winding up of the Lessee (except for the purpose of reconstruction or amalgamation with the written consent of the Lessor); or
  - (b) a Receiver or Receiver and Manager or Administrator or Controller or any of them is appointed to the Lessee or any property of the Lessee or action is taken towards such appointment; or
  - (c) if the Lessee goes into liquidation or provisional liquidation or makes an assignment for the benefit of or enters into an arrangement or composition with its creditors or stops payment or is unable to pay its debts with the meaning of the *Corporations Act 2001 (Cth)* (as amended from time to time); or
  - (d) the Lessee is deregistered or dissolved;
- 5.2.4 (in the event the Lessee is an individual):
- (a) the Lessee commits an act of bankruptcy or permits a sequestration order in bankruptcy to be made against the Lessee;
  - (b) the Lessee is convicted of an indictable offence (other than a traffic offence);
- 5.2.5 the Premises are left unoccupied for 14 days without the Lessor's consent;
- 5.2.6 execution is levied against the Lessee and not discharged within 14 days;
- 5.2.7 any property in or on the Premises is seized or taken in execution under any judgment or other proceedings; or
- 5.2.8 any event described in clauses 5.2.4 to 5.2.7 (all inclusive) occurs in respect of any guarantor of the Lessee's obligations under this Lease, then in any one or more of such events the Lessor at any time or times after such event will have the right to terminate this Lease and re-enter and repossess the Premises without prejudice to any right of action or other remedy which the Lessor has or might otherwise have for arrears of Rent or breach of any term of this Lease and if such right is exercised:
- 5.2.9 the Lessor is freed and discharged from any action, suit, claim or demand by or obligation to the Lessee under or by virtue of or in respect of this Lease; and
- 5.2.10 the Lessee will not be entitled to claim or receive from the Lessor any compensation or damages in respect of such termination, re-entry and repossession.

### 5.3 Repudiation

In the event that the Lessee's conduct (whether by act or omission) constitutes a repudiation of this Lease (or of any of the Lessee's obligations under this Lease) or constitutes a breach of any covenant or covenants, the Lessee

covenants to compensate the Lessor for all loss, damage, costs and expenses of any nature suffered or incurred by reason of such repudiation or breach.

**5.4 Recover Losses**

The Lessor will be entitled to recover losses, damages, costs and expenses from and against the Lessee in respect of any repudiation or breach of covenant for the losses, damages, costs and expenses suffered or incurred by the Lessor during the entire Term of this Lease.

**5.5 No Bar to Recovery**

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

- 5.5.1 the Lessee abandoning or vacating the Premises;
- 5.5.2 the Lessor re-entering the Premises and/or terminating the Lessee's leasehold interest in the Premises;
- 5.5.3 the Lessor accepting the Lessee's repudiation; or
- 5.5.4 conduct of the parties which may constitute a surrender by operation of law.

**5.6 Damages**

If this Lease is terminated by the Lessor, the Lessor will be entitled to recover all costs, expenses, losses and damages in respect of the loss of benefits which observance or performance of this Lease would have conferred on the Lessor had this Lease and the Lessee's obligations under it endured for the unexpired balance of the Term.

**5.7 Mitigation**

- 5.7.1 In the event of the Lessee vacating the Premises, whether with or without the Lessor's consent, the Lessor will be obliged to take reasonable steps to mitigate its damages and to endeavour to lease the Premises at a reasonable Rent and on reasonable terms having regard to the circumstances at the time.
- 5.7.2 The Lessor's damages must be assessed on the basis that the Lessor should have observed the obligation to mitigate damages contained in this paragraph.
- 5.7.3 The Lessor's conduct in attempting to mitigate its damages will not constitute acceptance of the Lessee's breach or repudiation or a surrender by operation of law.

**5.8 Landlord and Tenant Act**

In the case of a breach of any covenant or condition contained in this Lease then the notice to the Lessee to be given pursuant to section 10 of the *Landlord and Tenant Act 1936* as amended must provide that the period of fourteen (14) days is the time 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 Lessor in respect of the breach.

**5.9 Abandoned Chattels**

Any chattels, goods or other property left on the Premises by the Lessee at the expiration of the Term or the surrender of this Lease or any sooner determination of this Lease may be dealt with at the discretion of the Lessor and at the cost of the Lessee and the Lessor will not be responsible in any respect to the Lessee or to any person claiming through the Lessee for any loss or damage occasioned by such dealing.

**5.10 Default Interest and Fees**

Without prejudice to the rights, powers and remedies of the Lessor otherwise under this Lease:

- 5.10.1 the Lessee will pay to the Lessor interest at the Default Rate on any moneys due and payable by the Lessee to the Lessor on any account whatsoever pursuant to this Lease; and
- 5.10.2 such interest must be computed from the date on which the moneys became payable until payment of such moneys is made in full and will be recoverable in like manner as Rent in arrears.

**5.11 Power of Attorney**

If the Lessor becomes entitled to terminate this Lease and so to re-enter and take possession of the Premises after necessary compliance with any relevant statutory provisions as to the exercise of rights of re-entry (of which the statutory declaration of an officer of the Lessor will be conclusive evidence for the purpose of the Registrar-General) then the Lessee irrevocably appoints the Lessor as the attorney of the Lessee in the Lessee's name and as the Lessee's act and deed from time to time:

- 5.11.1 for the purpose of giving full effect to such termination, re-entry and repossession;
- 5.11.2 to execute a surrender of this Lease and to procure its registration and to record this Power of Attorney; and
- 5.11.3 to procure to be done any act, matter or thing which may be requisite or proper for giving full effect to such surrender according to the *Real Property Act 1886* or any law or custom for the time being in force in the State of South Australia.

**5.12 Damage and Destruction**

5.12.1 If the Premises or any part of the Premises is damaged or destroyed so that the Premises are inaccessible or unfit for the Permitted Use, then within 3 months after the damage or destruction occurs the Lessor must give the Lessee a notice either:

- (a) terminating this Lease (on a date at least 1 month after the Lessor gives notice);
- (b) advising the Lessee that it intends to repair the Premises so that the Lessee can occupy and use the Premises.

5.12.2 If the Lessor:

- (a) fails to repair the damage within a reasonable time after the Lessor has notified the Lessee of its intention to do so under clause 5.12.1(b); or
- (b) does not give any notice within the time stipulated in clause 5.12.1,

then the Lessee may give notice to the Lessor that it intends to terminate the lease if the Lessor does not make the Premises accessible and fit for use or occupation by the Lessee within a reasonable time (having regard to the nature of the required work).

5.12.3 If the Lessor does not comply with the Lessee's notice under clause 5.12.2 then the Lessee may terminate this Lease by giving not less than 1 month's written notice to the Lessor.

5.12.4 In the event of termination under this clause 5.12 neither party will have any claim for or right to recover any compensation by reason of

such termination but without prejudice to the rights of either party for any antecedent breach or default or any claim by the Lessor from the Lessee for compensation in respect of the damage or destruction.

- 5.12.5 If the Premises are rendered wholly or partially inaccessible or unfit for use as a result of damage or destruction then a just proportion (if any) of the Rent and other charges payable by the Lessee under this Lease having regard to the nature and extent that the Premises have been rendered inaccessible or unfit for use will cease and be suspended until the Premises are useable and accessible unless the damage or destruction arises from a negligent act or omission of the Lessee or the Lessee's Agents. If such proportion cannot be agreed between the Lessor and the Lessee such proportion must be determined by a Valuer.

## 5.13 Costs and Remedies on Default

- 5.13.1 If the Lessee breaches or fails to perform any term of this Lease and such breach or failure to perform continues for 7 days after the Lessor has given the Lessee notice requiring the Lessee to remedy the breach or perform the term (except in an emergency when no notice is required) then:

- (a) the Lessor may remedy the breach or perform the term without prejudice to any other right or remedy; and
- (b) the Lessee must pay to the Lessor all resulting costs incurred by the Lessor.

- 5.13.2 All costs incurred by the Lessor in respect of:

- (a) the recovery of Rent and other money payable by the Lessee to the Lessor under this Lease; and
- (b) the Lessor remedying or attempting to remedy any Lessee's breach of or failure to perform any term of this Lease

will be deemed to be additional Rent falling due and payable on the date on which the Lessor incurs such costs.

## 6. RENEWAL

### 6.1 First Renewal Term

On the written request of the Lessee made not less than six (6) months nor more than nine (9) months before the expiration of the Original Term and provided that there is not at the time of such request any existing breach or non-observance of any of the covenants and conditions contained in this Lease and on the Lessee's part to be observed and performed, the Lessor will grant to the Lessee a renewal of this Lease for a further term for the period set out in Item 6(a) of the Schedule (**First Renewal Term**) subject to and upon the same terms and conditions as are contained in this Lease, save for the exclusion of this clause 6.1.

### 6.2 Second Renewal Term

If this Lease is renewed pursuant to clause 6.1, then on the written request of the Lessee made not less than six (6) months nor more than nine (9) months before the expiration of the First Renewal Term and provided that there is not at the time of such request any existing breach or non-observance of any of the covenants and conditions contained in this Lease and on the Lessee's part to be observed and performed, the Lessor will grant to the Lessee a renewal of this Lease for a further term for the period set out in Item 6(b) of the Schedule (**Second Renewal Term**) subject to and upon the same terms and conditions as are contained in this Lease, save for the exclusion of clauses 6.1 and 6.2.

**6.3 Third Renewal Term**

If this Lease is renewed pursuant to clause 6.2, then on the written request of the Lessee made not less than six (6) months nor more than nine (9) months before the expiration of the Second Renewal Term and provided that there is not at the time of such request any existing breach or non-observance of any of the covenants and conditions contained in this Lease and on the Lessee's part to be observed and performed, the Lessor will grant to the Lessee a renewal of this Lease for a further term for the period set out in Item 6(c) of the Schedule (**Third Renewal Term**) subject to and upon the same terms and conditions as are contained in this Lease, save for the exclusion of clauses 6.1, 6.2 and 6.3.

**6.4 Guarantors**

If the due observance or performance by the Lessee of its duties and obligations under this Lease has been guaranteed by any person, firm or corporation then the execution by such guarantor or guarantors of such documents or assurances as the Lessor may require for the purpose of affirming or renewing such guarantee or guarantees will be a condition precedent to the exercise by the Lessee of the Lessee's right of renewal under this clause.

**6.5 Renewal Effective Despite No Rent Review**

If this Lease is renewed pursuant to this clause 6 and on the date of commencement of the renewed term the Rent has not been reviewed pursuant to clause 7 then the renewal will be effective, notwithstanding that the Rent will be reviewed at a subsequent date.

**6.6 Time of the Essence**

Time will be of the essence in respect of this clause 6.

**7. RENT REVIEW**

**7.1 Market Rent**

The Rent will be reviewed as at each of the dates specified in Item 4(a) of the Schedule (each a **Market Review Date**) to the Current Market Rent as at the relevant Review Date as follows:

- 7.1.1 at any time being not more than three (3) months before the Review Date, the Lessor may give notice to the Lessee setting out the amount which the Lessor assesses to be the Current Market Rent (**Lessor's Notice**) and unless within fourteen (14) days from the date of the Lessor's Notice the Lessee gives notice to the Lessor that the Lessee disputes such assessment then the Current Market Rent will be as assessed by the Lessor in the Lessor's Notice;
- 7.1.2 if the Lessee gives notice under clause 7.1.1 that it disputes the Lessor's Notice, the annual Rent for the Premises must be the Current Market Rent as determined by a Valuer, whose appointment must include a requirement that the Valuer accept instructions to undertake the determination on the following basis:
  - (a) immediately on appointment the Valuer must notify the Lessor and the Lessee in writing of the fact of such appointment and the Valuer's acceptance of it;
  - (b) the Valuer must seek written submissions from the Lessor and the Lessee or their duly authorised representatives as to the matters to which the Valuer should have regard in making the determination;
  - (c) the Valuer must give consideration to those submissions before making the determination, provided that the submissions are

made within the time nominated by the Valuer;

- (d) immediately on making the determination the Valuer must dispatch to the Lessor and the Lessee a copy of the determination which must be a 'speaking' valuation setting out the matters which the Valuer has considered and the full reasons for the determination;
- (e) the determination must be made within thirty (30) days following the Valuer's acceptance of the appointment;
- (f) if the Valuer fails to make the determination within thirty (30) days after accepting the appointment or becomes incapacitated or dies or resigns from the appointment then another Valuer may be appointed to act in accordance with this clause 7.1.2.

7.1.3 All costs incurred in connection with the valuation in accordance with clause 7.1.2 must be paid by the Lessor and the Lessee equally unless the Valuer's determination is equal to or higher than the amount specified in the Lessor's Notice, in which case all valuation costs must be borne by the Lessee.

7.1.4 Notwithstanding anything contained in this clause 7.1 the Current Market Rent at any particular Market Review Date shall not in any event be less than the annual Rent payable immediately prior to the relevant Market Review Date.

## 7.2 CPI

7.2.1 The Rent will be reviewed as at each of the dates specified in Item 4(b) of the Schedule (each a **CPI Review Date**) to an amount equivalent to 'A' calculated in accordance with the following formula:

$$A = B \times \frac{C}{D}$$

Where:

'B' is the amount of the annual Rent payable in respect of the Premises during the twelve (12) months immediately before the relevant Review Date but disregarding any rent incentives or rebates;

'C' is the CPI for the quarter ending immediately before the relevant CPI Review Date (**Relevant Date**); and

'D' is the CPI for the quarter ending twelve (12) months prior to the Relevant Date.

7.2.2 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.

## 7.3 Fixed Review

7.3.1 The Rent will be reviewed as at each of the dates specified in Item 4(c) of the Schedule (each a **Fixed Review Date**) to an amount equal to the Rent (disregarding all incentives and rent free periods) payable immediately before the relevant review date increased by ### percent (###%) per annum.

#### **7.4 Rent Review Effective from Review Date**

If the new Rent applicable as at and from any Review Date is not determined by that date then pending such review the Lessee shall pay the instalments of Rent at the rate applicable immediately prior to the Review Date and the new Rent shall be varied retrospectively as at and from the Review Date and any adjustment necessary in respect of any underpayment of any instalment paid after any Review Date must be paid by the Lessee to the Lessor within fourteen (14) days after the Rent is determined.

#### **7.5 Delay**

The failure of the Lessor to require a determination of the new Rent as at any Review Date shall not impede or prevent the Lessor at any subsequent time from requiring the new Rent to be determined pursuant to this clause 6 as at and from the Review Date.

### **8. GENERAL**

#### **8.1 Managing Agent**

- 8.1.1 The Lessor may from time to time appoint a managing agent to manage the Premises.
- 8.1.2 Any managing agent so appointed will represent the Lessor in all matters relating to this Lease except insofar as the Lessor may otherwise in writing direct.
- 8.1.3 Any communication from the Lessor to the Lessee will to the extent of any inconsistency supersede any communication from the managing agent.

#### **8.2 Waiver**

No waiver by the Lessor of one breach of any covenant obligation or provision in this Lease contained or implied will operate as a waiver of another breach of the same or any other covenants obligations or provisions in this Lease contained or implied.

#### **8.3 Notice**

- 8.3.1 Without prejudice to any other means of serving notice, any notice required to be served under this Lease will be sufficiently served:
  - (a) to the Lessee, by personal service on the Lessee (or if it is a body corporate on a director, secretary or other officer of the Lessee) or by personal service at the Premises or by post or facsimile transmission to the Premises or the Lessee's registered office (if a body corporate) or by personal service at or post or facsimile transmission to the Lessee's last place of business or residence known to the Lessor; and
  - (b) to the Lessor, if served in accordance with the *Local Government Act 1999* and marked 'Attention: Chief Executive Officer'.
- 8.3.2 Any notice may be signed on the party's behalf by its attorney, director, secretary or other officer or solicitor.
- 8.3.3 A notice by post is deemed served at the time when it ought to be delivered in the due course of post.
- 8.3.4 A notice by facsimile is deemed served on production of a transmission report by the machine from which it is sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient.

- 8.3.5 Where there is more than one person comprising the Lessee a notice served on or by any one or more of the persons comprising the Lessee is deemed served on or by all of the persons comprising the Lessee.

#### 8.4 **Entire Agreement**

Subject to clause 8.6 of this Lease:

- 8.4.1 the terms of this Lease and any consents given pursuant to this Lease comprise the whole of the agreement between the Lessor and Lessee;
- 8.4.2 no other agreements, conditions, warranties or terms will be implied in this Lease or arise between the Lessor and Lessee by way of collateral agreement except such as are specifically stated in this Lease; and
- 8.4.3 no promise, representation or warranty (including without limitation as to the suitability of the Premises to conduct the Lessee's business or to the fittings fixtures and facilities of the Premises) has been given or made by or on behalf of the Lessor to the Lessee,

and the Lessee acknowledges that it enters into this Lease relying entirely on its own investigations, inspections and judgment.

#### 8.5 **No Partnership**

Nothing contained in this Lease will create the relationship of partnership or of principal and agent or of joint venture between the Lessor and the Lessee and no term of this Lease will create any relationship between the Lessor and the Lessee other than the relationship of lessor and lessee.

#### 8.6 **Real Property Act**

The covenants and powers implied in leases by virtue of Sections 124 and 125 of the *Real Property Act 1886* will apply and be implied in this Lease unless they are expressly or by necessary implication excluded or modified.

#### 8.7 **Electricity**

- 8.7.1 The Lessee acknowledges that:
- (a) nothing in this Lease obliges the Lessor to supply electricity to the Premises;
  - (b) if the Lessor does supply electricity to the Premises and the Lessor elects not to supply electricity to the Premises then the Lessor will give the Lessee not less than two (2) months' notice of its intention to cease to supply the Premises and as from the date of cessation the Lessee must obtain electricity from a licensed retailer of electricity (under the *Electricity Act 1996*).
- 8.7.2 If the Lessor does supply electricity to the Premises:
- (a) the Lessee must pay for all such electricity purchased from the Lessor at the rate nominated by the Lessor from time to time; and
  - (b) the Lessee must pay to the Lessor the network charge that the Lessee would be required to pay to the operator of the external electricity distribution network as if the Premises were directly connected to that external electricity distribution network.
- 8.7.3 Where the Lessee obtains electricity from a licensed retailer of electricity the Lessee will ensure that any contract entered into by the Lessee with a licensed retailer of electricity includes a condition requiring the licensed retailer of electricity to provide information to the



Lessor concerning the Lessee's consumption of electricity in or in relation to the Premises.

- 8.7.4 If the Lessee purchases electricity directly from a licensed retailer and has access to the Lessor's inset network then the Lessee must pay to the Lessor the network charge that the Lessee would be required to pay to the operator of the external electricity distribution network as if the Premises were directly connected to that external electricity distribution network.
- 8.7.5 To the extent permitted by law, the Lessor will not be liable to the Lessee for any failure to supply electricity except to the extent that such failure is caused or contributed to by the negligence of the Lessor or any of its contractors or agents.

## 8.8 Rules and Regulations

- 8.8.1 The Lessor may from time to time promulgate Rules and Regulations not inconsistent with the rights of the Lessee relating to:
- (a) the use safety care and cleanliness of the Premises or the Park Lands;
  - (b) the policing and regulating of traffic and the parking of motor vehicles on or near the Premises or the Park Lands;
  - (c) any other matters that relate to the Premises or the Park Lands.
- 8.8.2 The Rules and Regulations will, on and from the Commencement Date, be those that are set out in Annexure A to this Lease.
- 8.8.3 The Lessor may amend the Rules and Regulations at any time by written notice to the Lessee, and the commencement of such amendment will be on and from the date of such notification.

## 9. HOLDING OVER

- 9.1 If the Lessee holds over after the expiration or sooner determination of the Term with the consent of the Lessor, the Lessee then becomes a monthly tenant of the Lessor which tenancy may be terminated by either party giving to the other party no less than one (1) month's prior notice expiring at any time at a monthly rent equivalent to one twelfth of the amount 'A' calculated in accordance with the following:

$$A = B \times 1.05$$

where 'B' is the annual rent payable by the Lessee in respect of the Premises immediately prior to the expiration or sooner determination of the Term (and the rent so adjusted will be further adjusted in the same manner on each anniversary of that date).

- 9.2 If the Lessee vacates the Premises on the expiration of the Term or sooner determination of this Lease then, even though the Lessee is not in physical occupation of the Premises, the Lessee will be deemed to be holding over on a daily basis at a rent to be determined in the manner specified in clause 9.1 and otherwise on the same terms and conditions as those contained in this Lease until the Lessee has complied with all of the provisions of this Lease, including without limitation those relating to rectification of the Premises, painting of the Premises and removal of the Lessee's signs notices fixtures fittings plant and equipment.

## **10. LESSOR'S CONSENT**

- 10.1 In any case where under this Lease the doing or execution of any act matter or thing by the Lessee is dependent upon the consent or approval of the Lessor such consent or approval:
  - 10.1.1 may be given or withheld by the Lessor in its absolute discretion unless otherwise provided;
  - 10.1.2 may be given unconditionally or on conditions imposed by the Lessor in the Lessor's absolute discretion;
  - 10.1.3 means prior written consent and prior written approval;
  - 10.1.4 if given, is only given in the Lessor's capacity as landlord, and in no other capacity.
- 10.2 The Lessee must reimburse the Lessor upon demand any costs or fees paid by the Lessor to consultants engaged by the Lessor to examine or advise upon any application made by the Lessee (including any plans specifications or other material submitted with it) for such consent or approval and all incidental documents and any other moneys outlaid or expenses incurred by the Lessor in connection with such consent or approval, whether or not such consent or approval is ultimately given or withheld.
- 10.3 Without limiting any other provision of this Lease, the Lessee agrees that, notwithstanding any consent granted by the Lessor pursuant to any provision of this Lease such consent will not in any circumstances relieve the Lessee of its obligation to obtain all necessary statutory consents and approvals from any Statutory Authority having jurisdiction in relation to the activity the subject of the consent.

## **11. GOODS AND SERVICES TAX**

- 11.1 If GST is imposed or levied in respect of any Supply made by the Lessor to the Lessee under or in accordance with or pursuant to the terms covenants and conditions of this Lease, the Lessee must duly and punctually pay the amount of GST to the Lessor or as the Lessor directs.
- 11.2 Any invoice or request for payment of GST must be in the form of a Tax Invoice within an approved form under the GST Act.
- 11.3 The amount payable by the Lessee to the Lessor for, or in connection with, a Supply under this Lease does not include any GST.
- 11.4 The Lessee must pay the Lessor an additional amount on account of GST equal to the amount payable by the Lessee for the relevant Supply multiplied by the prevailing GST Rate.
- 11.5 The additional amount is payable at the same time as when the amount for the relevant Supply is required to be paid by the Lessee to the Lessor.
- 11.6 To the extent that the amount for a Supply consists of the reimbursement of costs and expenses incurred by the Lessor, in this Lease those costs and expenses are deemed to be exclusive of the amount of any refund or input tax credit of GST to which the Lessor is entitled as a result of incurring the cost or expense.

## **12. DISPUTES RESOLUTION**

- 12.1 A party to a dispute in connection with this agreement ('**Dispute**') must comply with this clause before starting arbitration or court proceedings (except proceedings for interlocutory relief).
- 12.2 A party to a Dispute must give the other parties to the Dispute notice setting out details of the Dispute.

- 12.3 For twenty (20) Business Days after that notice given, each party to the Dispute must use reasonable efforts to resolve the Dispute.
- 12.4 If the parties cannot resolve the Dispute within the period referred to in clause 12.3, they must refer the Dispute to a mediator.
- 12.5 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 LEADR or nominee to appoint a mediator.
- 12.6 The mediator must assist in negotiating a resolution of the Dispute.
- 12.7 A mediator may not bind a party unless the party agrees in writing.
- 12.8 The mediation ends if the Dispute is not resolved within twenty (20) Business Days after the mediator's appointment.
- 12.9 Each party:
  - 12.9.1 must keep confidential any information or documents disclosed in the dispute resolution process; and
  - 12.9.2 may use that information or those documents only to try to resolve the Dispute.
- 12.10 Each party to a Dispute must pay its own costs of complying with this clause, and the parties to the Dispute must pay equally the costs of the mediator and any third party reports and enquiries requested by the mediator.
- 12.11 If a party to a Dispute breaches this clause, other parties to the Dispute do not have to comply with this clause in relation to the Dispute.

## ANNEXURE A

### RULES AND REGULATIONS

- |                               |    |   |
|-------------------------------|----|---|
| Exterior controlled by Lessor | 1. | The area of the Park Lands beyond the Premises will be under the absolute control of the Lessor including but without limiting the generality of that:<br><br>1.1      Restriction of parking by Lessees and the Lessees Agents in parking areas;<br><br>1.2      Closure of all or any portion of such areas to such extent as may in the opinion of the Lessor be legally sufficient to prevent a dedication of the same or the accrual of any rights to any person or the public therein;<br><br>1.3      Temporary or permanent closure of all or any portion of the parking areas or facilities for the purpose of repairs or like purposes. |
| Signs                         | 2. | No sign device fitting furnishing ornament or object which is visible from the street or from any other building which is in the opinion of the Lessor incongruous or unsightly or may detract from the general appearance of the Park Lands will be erected constructed or maintained by the Lessee in the Park Lands.   |
| Hanging articles              | 3. | No towels or other similar articles will be hung out of the windows or upon the roof of the Premises.   |
| Musical instruments           | 4. | The Lessee must not play or permit any person to play any musical instrument in or about the Premises except with the consent of the Lessor.  |
| Address and telephone numbers | 5. | The Lessee must advise the Lessor of the private address and telephone number of the Lessee or if the Lessee is a corporation of the manager of the Lessee or if there is more than one Lessee of each of them and the Lessor and its managing agent must be promptly informed of any change in such address or telephone number.   |
| Secure doors etc              | 6. | All doors and windows to the Premises must be securely fastened on all occasions when the Premises are left unoccupied and the Lessor reserves the right for its agents, caretakers, employees, servants or workmen to fasten same if left insecurely fastened.   |
| Keys                          | 7. | All keys belonging to the Premises (if any) held by the Lessee during its occupancy whether the same have been provided by the Lessor or made or procured by such Lessee for its own use must be surrendered to the Lessor on the termination of its tenancy.   |
| Rubbish                       | 8. | The Lessee must not throw or allow to fall anything out of the doors passages or skylights or deposit   |

waste paper rubbish or liquid anywhere except in the proper receptacles or drains where appropriate.

- |                   |     |  |
|-------------------|-----|--|
| Deliveries        | 9.  | The Lessee will use or permit to be used for the receipt delivery or other movement of any goods wares or merchandise or articles of bulk or quantity only such parts of the Park Lands and at such times as the Lessor may from time to time direct.            |
| Clean             | 10. | The Lessee will keep clean and free from dirt and rubbish such parts of the Park Lands or any public footpath or way as immediately adjoin the Premises.   |
| Theft and robbery | 11. | The Lessee will use his best endeavours to protect and keep safe the Premises and any property contained in the Premises from theft or robbery and must keep all doors windows and other openings closed and securely fastened when the Premises are not in use. |
| Vehicles          | 12. | The Lessee must not drive, ride or park any vehicle on or over any part of the Park Lands without the Lessor's consent   |

**ANNEXURE B**  
**PLAN**

Draft

EXECUTED as an AGREEMENT

**Lessor**

**THE COMMON SEAL** of )  
**THE CORPORATION OF THE CITY OF** )  
**ADELAIDE** was hereunto affixed the )  
day of 20 : )

.....  
Mayor

.....  
Chief Executive Officer

**Lessee**

**EXECUTED** by **JOLLEY'S BOAT HOUSE BISTRO PTY LTD** (ACN 008 064 953) in accordance with s127(1) of the *Corporations Act* by:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director / Secretary (delete inapplicable)

*If only one person has signed, that person states that he or she is the sole Director and Secretary of the Company.*