

**CITY OF MARION  
GENERAL COUNCIL MEETING  
24 January 2012**

**CONFIDENTIAL REPORT**

**REPORT RELATING TO:  
A leader in the delivery of the Community Vision**

**Originating Officer:** Abby Dickson, Manager Libraries and Cultural Development

**Director:** Heather Montgomerie, Director Corporate & Community Services

**Subject:** Commercial Arrangements

**Ref No:** GC240112F01

**File No:** 16.21.3.52

If the Council so determines, this matter may be considered in confidence under Section 90(2) and (3)(d) of the Local Government Act 1999 on the grounds that it relates to commercial information of a confidential nature the disclosure of which could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage to a third party.



**Mark Searle**  
Chief Executive Officer

1. Pursuant to Section 90(2) and (3)(d) of the Local Government Act 1999 the Council orders that all persons present, with the exception of the following Mark Searle, Chief Executive Officer, Adrian Skull, Director City Development, Heather Montgomerie, Director Corporate and Community Development, Jeff Rittberger, Director Governance, Abby Dickson, Manager Library and Cultural Development, Kate McKenzie, Acting Manager Governance, Jaimie Thwaites, Unit Manager Council Support, Peter Bice Acting Unit Manager Council Support, Craig Clarke, Unit Manager Communications, Marg Edgecombe, Unit Manager Arts & Cultural Development, David Barrett, Marion Cultural Centre Coordinator be excluded from the meeting as the Council receives and considers a report in relation to proposed Commercial Arrangements upon the basis that the Council is satisfied that the requirement for the meeting to be conducted in a place open to the public has been outweighed by the need to keep the receipt / discussion / consideration of the matter confidential as disclosure of which could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage to a third party.

## **STRATEGIC OBJECTIVES:**

*CV3.1 Develop unique and vibrant public places that express local identity and meet local needs*

*CV3.2 Provide and support opportunities to celebrate and express community identity*

*DE1 A supportive business environment*

*DE2 A strong adaptable and diversified economy*

*CWSP1 further develop the Marion Regional centre as a Focal Point of Southern Adelaide*

## **REPORT OBJECTIVE AND EXECUTIVE SUMMARY:**

This report provides Council with a summary of tender process undertaken to source a private operator to manage the operations of Signatures Cafe and the assessment undertaken to identify a preferred operator for Council's consideration. The process resulted in two operators submitting written proposals. Both operators were interviewed by Savills and City of Marion staff. Anne Harry/Grace Deleo is the operator recommended to Council and a 3 year lease is proposed with the right to renew for another 3 years.

## **RECOMMENDATIONS:**

**That:**

- 1. Council enter into a new lease with Anne Harry and Grace Deleo for a term of three years with a right to renew for a further three years over the portion of the land contained in Certificate of Title Volume 5880 Folio 722, known as the 'Cafe', located at 287 Diagonal Road, Oaklands Park.**
- 2. Council, pursuant to Section 37(b) of the *Local Government Act 1999* authorises the Chief Executive Office to enter into and execute all documentation necessary to prepare and implement the above lease.**
- 3. In accordance with Section 91(7) and (9) of the Local Government Act 1999 the Committee orders that this report, the minutes arising from this report and any other information distributed at the meeting having been considered in confidence under Section 90(2) and (3)(d) of the Act be kept confidential and not available for public inspection for a period of 12 months from the date of this meeting. This confidentiality order will be reviewed at the General Council meeting in December 2012.**

## **DUE DATES**

Recommendation 1	22 January 2012
Recommendation 2	22 January 2012
Recommendation 2	22 January 2012

## DISCUSSION:

### Background

Signatures Café is an integral component of the Marion Cultural Centre (MCC) acting as a vibrant café and meeting place and providing catering services which compliment the theatre, function rooms, library and gallery.

At the 23 August 2011 general council meeting Council resolved to undertake an EOI to tender the operations of Signatures café to a private operator and requested that administration present a report to Council at the conclusion of the tender with a recommended operator and the final terms and conditions of the lease.

The tender process has been completed and this report provides an overview of the process and presents a recommended operator for Council's consideration.

### Discussion:

The EOI process was managed by Savills property management. The lease was advertised for a period of 4 weeks commencing on 29 September 2011 and closed on the 15 November 2011. During the EOI period Savills received 30 enquiries, 10 persons signed a confidentiality deed to obtain further information on the business and 6 operators registered their interest.

As part of the EOI process operators were required to supply the following information as part of their proposal:

- Rental Offer
- Consideration of purchase of plant and equipment
- Lease term proposal
- Rental increases
- Deposit
- Settlement
- Relevant experience
- Achievement in customer service
- Marketing and business management strategies
- Service brand and the type of menu they would bring to the café

Out of the 6 operators who registered interest only two completed a full application which provided the required information for assessment.

Applicants were assessed using the following criteria and weighting.

Criteria	Weighting
<b>Alignment with Councils Objectives</b> <ul style="list-style-type: none"> <li>▪ Healthy Cities</li> <li>▪ Service Quality</li> <li>▪ Employer of Choice</li> <li>▪ Community and cultural outcomes</li> </ul>	30%
<b>Capacity</b> <ul style="list-style-type: none"> <li>▪ Staffing structure</li> <li>▪ Liquor Licence Experience</li> <li>▪ Experience in café/restaurant</li> </ul>	30%

Criteria	Weighting
<b>Approach</b> <ul style="list-style-type: none"> <li>Opening hours</li> <li>Menu options</li> <li>Menu pricing</li> <li>Approach to catering</li> <li>Marketing strategies</li> <li>Partnership</li> <li>Planned changes to décor</li> <li>Evidence of investment into P&amp;E</li> <li>Appeal to cross section of the community</li> <li>Communication</li> <li>Flexibility in meeting events</li> </ul>	30%
<b>Financial and Lease</b> <ul style="list-style-type: none"> <li>Terms of lease</li> <li>Rental</li> <li>Offer to purchase plant and Equipment</li> </ul>	10%

An assessment of the operators was based on their written application and information provided at interviews conducted by City of Marion Staff and Savills.

A summary of the results are provided below:

Criteria	Applicant 1		Applicant 2	
	Raw score /10	Weighted score	Raw score /10	Weighted score
Alignment with Council Objectives	5.8	17.3	7.8	23.3
Capacity	7	21	5.3	16
Approach	5.7	17	6.7	20.2
Financial and Lease	6.5	6.5	6.5	6.5
<b>Total Score</b>		<b>61.8</b>		<b>65.9</b>

#### Alignment with Council Objectives

Applicant 2 was the stronger candidate under this criteria demonstrating a strong alignment to Council's Healthy Cities policy through the sample menu provided and their philosophies behind delivering fresh and healthy food. The operator has experience working within arts and cultural industries and indicated an understanding of how the café needs to complement and enhance the community and cultural activities held with in the Marion Cultural Centre.

Both operators have sound experience in customer service and managing staff, and indicated a good understanding of service quality and best practice in employee management. Applicant 2 scored slightly higher in these two areas demonstrating they understood the diverse clientele which patronises Marion Cultural Centre and their proposal demonstrated a sound understanding that the café is a meeting place as well as a food outlet. They have extensive experience in customer service in the retail sector and in managing their own business both in the hospitality and event management industries. Their response indicated that their approach to staff management would align with Council philosophies.

### Capacity

Applicant 1 scored higher under this criteria being the more experienced operator having over 23 years experience in the food and beverage industry, including operating a licensed premise. This experience is predominantly in operating noodle bars across Adelaide with a period managing a restaurant at Port Noarlunga and a wine bar within the CBD.

In comparison, Applicant 2 have worked in the food industry since 2006 operating a café in the Paddington Market, Sydney, however it should be noted this is a one day a week operation which is extended to catering for a monthly evening event. It should be noted that running a café which operates seven days a week will be a new venture for this operator. Applicant 2 does however have extensive experience in managing their own business in event management and significant experience in managing a retail store.

Both operators provided an outline of the staffing structure they will employ to manage the business which were sustainable and appropriate for the size of operations.

### Approach

Applicant 2 scored higher under this criteria supplying more information in regards to the menu, pricing options and the marketing strategies they will utilise to meet the needs of the cafe clientele. The approach they outlined was complementary to the Council's objectives and the programs and events offered within the Marion Cultural Centre.

Applicant 1 approach was of a reasonable standard however was not as comprehensive as applicant 2.

### Financial and Terms and Conditions of Lease

Both operators scored evenly under this category presenting sound offers to Council which are summarised below. Both applicants were scored equally under this criterion.

	<b>Applicant 1</b>	<b>Applicant 2</b>
<b>Rental Offered</b>	\$ [REDACTED] + GST	\$ [REDACTED] + GST
<b>Consideration of Plant &amp; Equipment</b>	\$ [REDACTED]	\$ [REDACTED]
<b>Lease Term Proposal</b>	10+5+5	3+3+3
<b>Rental Increases</b>	CPI pa + Market on anniversary	Not specified
<b>Deposit</b>	\$ [REDACTED]	\$ [REDACTED]
<b>Settlement</b>	Available	Available

The rental and plant and equipment offer supplied by both operators is in line with current market value as advised by Savills Property Management.

### Recommended Operator

It is recommended that Council enter into a lease with Applicant 2 which this report identifies as Anne Harry / Grace Deleo. This recommendation has been formed on the basis they are strongly aligned to Council's objectives, have relevant experience and have outlined a sound business management approach.

Although Applicant 1 has more experience in the food industry the risks associated with this operator not being aligned with Council's objectives outweigh the risk associated with Applicant 2 not having managed a café which operates seven days per week.

### **Risk Assessment**

There are risks associated with any operator Council enters into a lease with to manage the café. The hospitality industry is subject to the changing economic environment and the individual circumstances of the operator. The terms and conditions of the lease mitigate against such risks and clearly state Council's expectations in regards to service standards and use of the premises.

In the event of an early termination of the lease Council has a proven track record in managing café operations via use of hospitality agency staff and this would be implemented as an interim measure in the event of Council needing to engage a new operator.

### **Time frames**

A period of up to eight weeks will be required to finalise the transfer of liquor licence.

Given this requirement the new operator will be in place commencing Monday 2 April 2012.

The available time leading up to the handover date will be utilised to ensure a smooth transition to the new operator.

### **Legal / Legislative and Risk Management:**

Legal advice was sought in devising the terms of the lease agreement. The attached agreement meets all legal requirements, and mitigates and or transfer any risks to ensure business continuity.

Savills Property Management will develop a sale of business contract and legal advice will be sought in formulating this final document.

### **Financial Implications:**

The costs associated with outsourcing the Café to a private operator are covered by the current operational budget of the MCC.

The transfer to an operator will deliver the following income to Council:

- Annual rental: \$ [REDACTED]
- Annual services and property maintenance charges: approximately \$ [REDACTED] (figure based on 2011-12 expenses)
- Once off offer of \$ [REDACTED] for purchase of plant and equipment

Annual operating expenses associated with the café (approximately \$ [REDACTED]) will no longer be incurred by Council as of 1 July 2012.

### **Finalisation of Lease and Terms of conditions**

There are minor final amendments required to finalise the terms and conditions of the lease which cannot occur until Council endorses the recommended operator. Such final amendments will not detract from the overall intent of the attached lease and include such things as start and end dates; and operational procedures which will be attached as addendums to the final lease.

This report seeks Council authorisation for the Chief Executive Officer to enter into and execute all documentation necessary to prepare and implement the lease.

**CONCLUSION:**

The outsourcing of Signatures Café to a commercial operator will ensure that the Café is well placed to meet the expanding commercial opportunities within the newly developed Domain Precinct. It is a financially sustainable model for the delivery of café services from a Council owned facility. The appointment will achieve a higher standard of customer service, contributing the overall vibrancy of the Marion Cultural Centre and Domain Precinct.

**Appendix 1 Memorandum of Lease**

**MEMORANDUM OF LEASE**

draft

Item 1

**CERTIFICATES OF TITLE BEING LEASED**

Portion of the land contained within Certificate of Title Volume 5880 Folio 722 being the area indicated as 'Café' on the plan in Appendix B

Item 2

**ESTATE AND INTEREST**

In fee simple

Item 3

**ENCUMBRANCES**

Nil

Item 4

**LESSOR** (Full name and address)**THE CORPORATION OF THE CITY OF MARION** of 245 Sturt Rd, Sturt SA 5047

Item 5

**LESSEE** (Full name, address and mode of holding)

###

Item 6

**TERM OF LEASE**

### YEARS

COMMENCING ON ###

EXPIRING ON ###

TOGETHER WITH THE RIGHT OF RENEWAL REFERRED TO IN CLAUSE 5



Item 7

**RENT AND MANNER OF PAYMENT (OR OTHER CONSIDERATION)**

### (\$###) 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.

**OPERATIVE CLAUSE** <sup>(a)</sup> delete the inapplicable

The Lessor LEASES TO THE LESSEE the land above described and the LESSEE ACCEPTS THIS LEASE of the land for the term and at the Rent stipulated, subject to the covenants and conditions expressed herein and to the powers and covenants implied by the Real Property Act 1886 (except to the extent that the same are modified or negated below).

Item 8

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

The whole of the land in the Certificate of Title referred to in Item 1

IT IS COVENANTED BY AND BETWEEN THE LESSOR AND THE LESSEE as follows:  
(Covenants, where not deposited, to be set forth on insert sheet(s) and securely attached)

**Schedule Continued**

ITEM 9 Permitted Use (clause 2.5)	Cafe (including the sale of alcoholic beverages for consumption on the Premises or the Seating Area) trading as 'Signature's Cafe'
ITEM 10A CPI Rent Reviews (clause 6.1)	###
ITEM 10B Market Rent Reviews (clause 6.3)	###
ITEM 11 Renewed Term (clause 5)	###
ITEM 12 Personal Guarantee (clause 2.36)	Applicable/Not Applicable
ITEM 13 Bank Guarantee (clause 2.37)	Applicable/Not Applicable

## 1. INTERPRETATION

In this Lease unless the contrary intention appears:

- 1.1 **'Accounting Period'** means the period of 12 months from and including 1 July immediately prior to the commencement of the Term until and including 30 June immediately following and each consecutive period of 12 months commencing from and including 1 July during the Term until and including 30 June immediately following;
- 1.2 **'Building'** means the interior and exterior of any building erected on the Land together with all improvements now or after the Commencement Date erected on or made to the Land and the improvements and structures on the Land and includes without limitation all air-conditioning fire protection and other plant machinery and equipment and all fixtures and fittings of the Lessor and all conveniences services amenities and appurtenances of or in the Building and any part of the Building;
- 1.3 **'Business Name'** means 'Signature's Cafe';
- 1.4 **'Commencement Date'** means the date of commencement of the Original Term set out in Item 6 of the Schedule;
- 1.5 **'Common Area'** means those portions of the Land outside the Premises that are designated by the Lessor from time to time for common use by the occupiers of the Land, and includes any part of those portions (and the Common Area, as at the Commencement Date, is as indicated on the plan in Appendix B);
- 1.6 **'CPI'** means the Consumer Price Index (All Groups) for Adelaide published from time to time by the Australian Bureau of Statistics or by the Commonwealth of Australia or by any other body authorised by the Commonwealth of Australia to do so;
- 1.7 **'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:
  - 1.7.1 the Lessee and the Lessor have observed all of the terms of this Lease;
  - 1.7.2 the Lessee will occupy the Premises on the terms of this Lease; and
  - 1.7.3 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;
    - (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; and
    - (e) that the annual Rent set out in Item 7 of the Schedule is GST exclusive and that under this Lease an additional amount on account of GST is payable;
  - 1.7.4 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;

- 1.8 **'Default Rate'** means:
- 1.8.1 the rate of interest 2 percentage points above the Loan Index Rate for commercial loans charged by the Commonwealth Bank of Australia Limited ABN 48 123 123 124 on the date default occurs, or if there be more than one rate then the highest of such rates; or
  - 1.8.2 if there is no such rate then the rate of interest 2 percentage points above the National Australia Bank Limited ABN 12 004 044 937 Indicator Base Rate on the date on which default occurs;
- 1.9 **'GST'** means any tax or other similar levy, surcharge, duty or impost charged, levied or imposed by law under the GST Act;
- 1.10 **'GST Act'** means *A New Tax System (Goods and Services Tax) Act 1999* and associated legislation and the expression includes any other Bill, law or legislation that may be introduced into the Parliament by way of amendment to or in substitution for the GST Legislation and all statutory instruments issued under it;
- 1.11 **'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;
- 1.12 **'Input Tax Credit'** means money paid or payable or credit allowed or allowable by the Australian Taxation Office under a statutory provision for taxpayers to recover GST paid to their suppliers attributable to the input costs of the taxpayers (in the GST Act called 'input tax credits');
- 1.13 **'Intellectual Property'** means all trademarks and business names incorporating the Business Name or any associated abbreviation or variation (whether registered or otherwise), trade mark applications, trade names, copyrights, industrial designs, website or other intellectual property associated with the cafe business that operates at the Premises, including the Business Name;
- 1.14 **'Land'** means the whole of the land in the titles referred to in Item 8 of the Schedule, including the Building and all other fixed improvements;
- 1.15 **'Lessee'** means the person named and described in Item 5 of the Schedule (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);
- 1.16 **'Lessee's Agents'** means each of the Lessee's agents, contractors, officers, employees, subtenants, invitees and other persons claiming through or under the Lessee;
- 1.17 **'Lessee's Ancillary Rights'** means the right and liberty at all reasonable times to and for the Lessee for the time being taking and deriving title under this Lease for so long as that person remains such Lessee and the Lessee's Agents in common with the Lessor and other tenants of the Land and all other persons authorised from time to time by the Lessor and subject always to the reasonable directions of the Lessor and any Rules and Regulations pursuant to this Lease:
- 1.17.1 of reasonable access ingress and egress to and from the Premises on foot only over across and along all portions of the Common Area from time to time set aside by the Lessor for use as public foyers entrances exits staircases lift yards passages courts corridors and vestibules;
  - 1.17.2 either with or without motor vehicles or other carriages to pass and repass over along and across those portions of the Common Area from time to time designated by the Lessor as thoroughfares and roads for the purpose of reasonable access ingress and egress to those portions of the Common Area allocated by the Lessor for car parking;
  - 1.17.3 to cause motor vehicles to be parked on those portions of the Common Area allocated by the Lessor for parking but only in the spaces designated by the Lessor and provided always that the Lessor will be at liberty to prohibit the Lessee and any Lessee's Agent from parking any vehicle in the Common Area at any time;
  - 1.17.4 with or without motor vehicles and other carriages but only for the purpose of the business of the Lessee and at such times that the Lessor may from time to time prescribe to pass and repass and for the purpose of loading and unloading to and

from the Premises of the Lessee to and remain on such portions of the Common Area as may be designated 'service areas' by the Lessor from time to time;

- 1.17.5 to use the male and female toilet facilities provided by the Lessor (if any);
- 1.18 **'Lessee's Proportion'** means the proportion from time to time that the NLA of the Premises bears to the NLA of the Land, provided that the Lessor may at any time to the extent permitted by law:
  - 1.18.1 allocate to the Lessee or to other occupiers or sections of the Land or Building any Operating Expenses identifiable in the Lessor's opinion as incurred in respect of the Lessee, the Premises, or such occupiers or sections;
  - 1.18.2 vary the Lessee's Proportion to exclude any particular occupiers or sections of the Land or Building from any liability for Operating Expenses;
- 1.19 **'Lessor'** means the person named and described in Item 4 of the Schedule (and if more than one then jointly and severally) and where the context allows the heirs executors administrators successors and permitted assigns of such person (and if more than one then jointly and severally);
- 1.20 **'Lessor's Agents'** means each of the Lessor's agents, contractors, officers, employees, subtenants, invitees and other persons claiming through or under the Lessor;
- 1.21 **'Maximum Trading Hours'** means from Mondays to Fridays (inclusive) from 0600 to 2400, Saturdays from 0600 to 2400, and Sundays from 0600 to 2400 (excluding public holidays in South Australia);
- 1.22 **'Minimum Trading Hours'** means means Mondays to Fridays (inclusive) from 0930 to 1600, Saturdays from 1000 to 1600, and Sundays from 1200 to 1600 (excluding public holidays in South Australia);
- 1.23 **'NLA'** means net lettable floor area calculated in accordance with the method of measurement as the Lessor reasonably determines;
- 1.24 **'notice'** means notice in writing or transmitted by facsimile;
- 1.25 **'Operating Expenses'** means the total of all amounts payable by the Lessor or the payment of which the Lessor may be or become liable in any one Accounting Year in respect of the Land (including without limitation the Building) whether by direct assessment or otherwise howsoever in respect of:
  - 1.25.1 all present and future rates, charges, taxes, levies, assessments, duties, impositions and fees of any relevant authority including without limitation:
    - (a) council rates;
    - (b) emergency services levies;
    - (c) water and sewerage rates and charges; and
    - (d) (unless the RCLA applies to this Lease) land tax calculated on a single holding basis;
  - 1.25.2 all insurance premiums and related expenditure paid or payable by the Lessor in respect of:
    - (a) the Land (including without limitation the Building and all other fixed improvements) in insuring against fire, flood, lightning, storm, earthquake and such other risks as the Lessor determines;
    - (b) insurance for consequential loss and loss of rent and rates, taxes and charges;
    - (c) damages or loss for vandalism and theft;
    - (d) damages to glass in any part of the Building;
    - (e) any other insurance effected by or on behalf of the Lessor in respect of the Building; and

- (f) the amount of the insured's excess paid by the Lessor in respect of any of such insurance;
- 1.25.1 the cost of cleaning maintaining lighting servicing and repairing the Common Areas, such cost comprising the Lessor's gross costs and expenses of every kind and nature incurred by the Lessor and includes without limitation:
- (a) the replacement of parts necessary to keep any of the plant, machinery and equipment in good working order and condition;
  - (b) resurfacing and repainting;
  - (c) cleaning;
  - (d) pest control;
  - (e) purchase construction clearing and maintenance of refuse receptacles;
  - (f) replanting and re-landscaping;
  - (g) directional signs and other markers;
  - (h) patrol of the Common Area;
  - (i) supervision of traffic directions when reasonably required;
  - (j) car stops;
  - (k) lighting and other utilities;
  - (l) reasonable depreciation allowance on machinery and equipment used in the Common Area;
  - (m) purchasing hiring maintaining and servicing of all gardens lawns shrubs planted areas fountains and artificial water courses in or about the Common Area;
  - (n) electricity consumed in the Common Area; and
  - (o) all things necessary in the opinion of the Lessor for the operation maintenance repair and/or renovation of the Common Area in a state of good and sanitary order condition and repair;
- 1.25.2 all costs charges and expenses incurred paid or payable by the Lessor in establishing and maintaining any common signs notices or directory boards in or about the Building or Land notifying or advertising the name or business of the Lessee or from which the Lessee is invited to display or advertise its business;
- 1.25.3 the charges payable to specialist contractors and the wages paid to permanent and temporary staff employed and the cost of materials used by the Lessor in or about the maintenance and servicing of the air conditioning equipment fire equipment and other services of the Land and Building;
- 1.25.4 all costs in respect of the testing modification maintenance replacement operation and servicing of the lifts and escalators (if any) at the Land;
- 1.25.5 the cost of security services in the Land and Building;
- 1.25.6 the cost of collecting and disposing of garbage and refuse from the Common Area and the areas leased to the various Lessees of the Land and Building (including the Premises under this Lease) and the wages of employees and charges payable to contractors engaged to collect and dispose of the same;
- 1.25.7 the cost of repairs to and maintenance of the Land and Building including without limitation:
- (a) the replacement of parts necessary to keep any plant, machinery and equipment in good working order and condition; and
  - (b) repainting the Building or any other parts of the Land previously painted as and when reasonably required by the Lessor,

but not being repairs of a structural nature or expenditure incurred by way of rebuilding or additions to the Land and Building or repairs or maintenance which are the obligation of any Lessee;

- 1.25.8 all reasonable costs (inclusive of wages) of management control and administration of the Land and Building including any audit costs;
- 1.25.9 all costs in respect of the control and eradication of pests and vermin;
- 1.26 '**Original Term**' means the original term of this Lease set out in Item 6 of the Schedule;
- 1.27 '**Permitted Use**' means the use to which the Lessee is entitled to put the Premises being the use described in Item 9 of the Schedule;
- 1.28 '**Premises**' means and includes that part of the Land or Building described in Item 1 of the Schedule, and where the context allows or includes:
  - 1.28.1 all the Lessor's fixtures fittings plant (including air conditioning plant if any) machinery fire protection equipment and chattels installed in or on the Premises;
  - 1.28.2 all the services to or in the Premises and any alterations additions improvements or modifications made to them from time to time; and
  - 1.28.3 all car parking areas (if any) on or within the Premises;
- 1.29 '**RCLA**' means the *Retail and Commercial Leases Act 1995*;
- 1.30 '**Recipient**' and '**Supplier**' have the respective meanings ascribed to those terms in the GST Act;
- 1.31 '**Rent**' means the rent reserved by this Lease;
- 1.32 '**Rules and Regulations**' means the rules and regulations promulgated by the Lessor under this Lease;
- 1.33 '**Schedule**' means the schedule contained at pages 1, 2 and 3 of this Lease;
- 1.34 '**Seating Area**' means the area indicated as 'Seating Area' on the plan in Appendix B, to which the Lessee has those rights set out in clause 11;
- 1.35 '**services**' means all electrical plumbing air conditioning gas telephone facsimile and other like installations including all pipes drains cables wires and conduits situated or contained in or on the Premises;
- 1.36 '**Supply**' has the meaning attributed to that term in section 9-10 of the GST Law;
- 1.37 '**Tax Invoice**' has the same meaning it does in the GST Act;
- 1.38 '**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;
- 1.39 '**Valuer**' means a qualified valuer (being an individual with the professional designation corresponding to valuer as designated by the Australian Property Institute as at the Commencement Date) who must be appointed to make a valuation or determination pursuant to this Lease and:
  - 1.39.1 who must be appointed by the Lessor and the Lessee or (if they fail to agree on the appointee within 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 Australian Property Institute (South Australian Division) or if that Institute has ceased to exist then the chief executive officer or other executive officer for the time being of a professional body formed by or for valuers in South Australia and fulfilling substantially the same functions as that Institute;
  - 1.39.2 who has for at least 5 consecutive years immediately prior to the date of such appointment been an accredited member of that Institute or body;
  - 1.39.3 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 5 consecutive years immediately prior to such appointment;

- 1.39.4 who must be deemed to act as an expert and not as an arbitrator;
- 1.39.5 whose determination must be final and binding as between the Lessor and the Lessee; and
- 1.39.6 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;
- 1.40 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;
- 1.41 words importing the singular embrace the plural and words importing one gender embrace the other genders and vice versa respectively;
- 1.42 any reference to a person will be deemed to include a corporate body and vice versa;
- 1.43 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;
- 1.44 any reference to day will be deemed to mean calendar day;
- 1.45 any consent where it is required by this Lease from the Lessor means prior consent in writing;
- 1.46 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;
- 1.47 headings are for convenience of reference only and will not affect the construction or interpretation of the covenants of this Lease;
- 1.48 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;
- 1.49 this lease is subject in all respects to any contrary provision which applies by force of law by virtue of the RCLA.

## 2. LESSEE'S COVENANTS

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

### 2.1 Rent

the Lessee must pay the Rent at the times and in the manner stipulated in Item 7 of the Schedule and free from exchange deduction and abatement:

- 2.1.1 to the Lessor or to such other person or at such other place as the Lessor notifies the Lessee in writing from time to time; or
- 2.1.2 by direct bank transfer to the credit of a bank account nominated by the Lessor;

### 2.2 Outgoings Utilities And Operating Expenses

2.2.1 the Lessee must pay all present and future rates, charges, taxes, levies, assessments, duties, impositions and fees of any relevant authority including without limitation:

- (a) council rates;
- (b) emergency services levies;
- (c) water and sewerage rates and charges; and
- (d) (unless the RCLA applies to this Lease) land tax calculated on a single holding basis,

that are referable only to the Premises ('statutory charges') as and when the statutory charges are due and payable to the relevant authority or if required by the Lessor to pay the statutory charges to the Lessor within seven (7) days of demand to do so;



- 2.2.2 all such statutory charges must be adjusted between the Lessor and the Lessee as at the Commencement Date and the expiry or determination (as the case may be) of this Lease and the Lessor's proportion will be deemed to be so much of the statutory charges that is referable to any period of time not included in the term of this Lease;
- 2.2.3 the Lessee must pay as and when due for payment all charges for gas electricity oil telephone and all other like services supplied (either by the Lessor or any other person or authority) to or consumed in or on or in respect of the Premises;
- 2.2.4 the Lessor may install in or about the Premises any meters necessary for measuring electric energy gas water and other services supplied to the Premises and the cost of such installation must be paid by the Lessee, and if no such meters are installed a statement in writing given by the Lessor as to any amount payable by the Lessee pursuant to this clause will be *prima facie* evidence of the matters stated therein, but the Lessee will be entitled to receive from the Lessor a copy of such records and documentation as the Lessor relies on to determine the amount payable;
- 2.2.5 the Lessee must pay to the Lessor the Lessee's Proportion of the Operating Expenses in each Accounting Period for the year or portion of the year as the case may be forthwith upon demand being made for payment;
- 2.2.6 the Lessor will:
  - (a) compute the Operating Expenses for each Accounting Period (and in respect of all periods of less than 1 year all items of an annual or other periodic nature will be apportioned as is appropriate);
  - (b) before the Commencement Date and at least 1 month before each Accounting Period, furnish to the Lessee a statement in reasonable detail of the estimated Operating Expenses to be paid or incurred by the Lessor and the amount estimated by the Lessor to be the Lessee's Proportion of such estimated Operating Expenses for any particular year or part of a year; and
  - (c) within 3 months from the end of each Accounting Period in each year furnish to the Lessee a statement (and if required by the RCLA, but not otherwise, prepared by a registered company auditor) of the actual Operating Expenses paid or incurred during the Accounting Period by the Lessor;
- 2.2.7 there will be an adjustment by the Lessor and the Lessee as required so that the Lessor will receive the entire amount of the Lessee's Proportion of such Operating Expenses for the period in question and no more;
- 2.2.8 if the Lease is assigned in the course of a year ending on 30 June any payment or repayment under the preceding clause will be made to or by the Lessor by or to the person actually in occupation of the Premises at the time when the payment becomes payable;
- 2.2.9 for any part of the Term which is not comprised within a full year ending on 30 June the Lessee will pay the Lessee's Proportion of the amount of the Operating Expenses which relates to that part of the year comprised in the Term;

## 2.3 Costs

in addition to the Rent and other money reserved by this Lease, the Lessee will pay on demand to the Lessor or as directed by the Lessor all:

- 2.3.1 the Lessor's legal costs and the Lessor's other reasonable expenses incurred in connection with the negotiations for and preparation of this Lease and any renewal or extension (but if the RCLA applies to this Lease, the Lessee will only be liable for half of those costs);
- 2.3.2 mortgagee consent and production fees in respect of this Lease or any extension or renewal of this Lease (but if the RCLA applies to this Lease, the Lessee will only be liable for half of those costs);
- 2.3.3 lease plan costs;

- 2.3.4 the Lessor's reasonable costs of any guarantee transfer assignment subletting or surrender of this Lease or to 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;
- 2.3.5 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;
- 2.3.6 the stamp duty and (if applicable) the registration fees payable in respect of this Lease and any dealings with this Lease by the Lessee, and all the mortgagee consent and production fees in respect of any assignment surrender or transfer of this Lease;
- 2.3.7 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;

## 2.4 Assignment, Subletting And Mortgaging

- 2.4.1 the Lessee may assign or transfer its interest under this Lease provided that the Lessee must first obtain the consent in writing of the Lessor, and the Lessor may withhold consent:
  - (a) if the RCLA applies to this Lease, if:
    - (i) the proposed assignee or transferee ('the Assignee') proposes to change the Permitted Use; or
    - (ii) the Assignee is unlikely to be able to meet the financial obligations of the Lessee under the Lease; or
    - (iii) the Lessor reasonably considers that the Assignee's business skills are inferior to those of the assignor; or
    - (iv) the Lessee has not complied with procedural requirements for obtaining the Lessor's consent as set out in section 45 of the RCLA; and
  - (b) if the RCLA does not apply to this Lease, in the Lessor's absolute discretion;
- 2.4.2 where:
  - (a) the Lessee is a proprietary company (other than a company listed on a recognised Stock Exchange in Australia) and there is a transfer or issue of any share or shares of the Lessee or of the ultimate holding company (except as a result of inheritance), including a transfer of the legal or beneficial interest, or any change to the directors of the Lessee, or to the Articles of Association or Constitution of the Lessee (whichever is applicable), which alters the effective control of the Lessee; or
  - (b) the Lessee is the trustee of a trust a transfer of the units in that trust or any other transaction the effect of which is to effectively change the beneficial ownership of the trust or of the business conducted by the trustee upon the Premises,

there will be deemed to be an assignment of this Lease requiring the consent of the Lessor;
- 2.4.3 the Lessee must not sublease licence grant a concession or part with possession or mortgage or otherwise charge or encumber the Lessee's interest in this Lease or the Premises or any part of the Premises without the prior written consent of the Lessor;
- 2.4.4 if the Lessor receives a request from the Lessee to consent under this clause, the Lessee must immediately on receipt of a request from the Lessor to do so:

- (a) pay all arrears of Rent, Operating Expenses 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 the terms of this Lease including without limitation those relating to the state of repair and cleanliness and painting of the Premises including the 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;
- (d) provide evidence satisfactory to the Lessor that the assignee is respectable responsible solvent and suitable and information reasonably required by the Lessor about the financial standing and business experience of the assignee;
- (e) if the assignee is a trustee of a Trust, submit a copy of the document under which such Trust was constituted and the full names addresses and occupations of the beneficiaries and Trustee of such Trust;
- (f) pay to the Lessor or its solicitors the reasonable costs of and incidental to the perusal preparation and stamping of the documents 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 Assignee:

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

2.4.5 in respect of all cases of transfer assignment subletting or parting with possession by the Lessee the Lessee:

- (a) will not be 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 Lessee's obligations;

2.4.6 if the Lessee grants a mortgage of this Lease the rights of the Lessor under this Lease will be in priority to the rights of the mortgagee of this Lease and the provisions of section 139 of the *Real Property Act* will not apply to such mortgagee in respect of its estate or interest in this Lease;

## 2.5 Permitted Use

2.5.1 the Lessee must not use the Premises nor permit the same to be used otherwise than for the Permitted Use nor will the Lessee:

- (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 in the neighbourhood;
- (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) do or permit to be done on the Premises anything which may damage the reputation of the Lessor;
- (e) use or permit or suffer to be used the Premises or any part of the same for the purpose of an auction unless the prior written consent of the Lessor is obtained;

2.5.2 the Lessee must:

- (a) promptly obtain keep current and comply with all consents approvals and licences from all relevant 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;

## 2.6 Maintenance, Repair And Painting

2.6.1 subject to the RCLA the Lessee must maintain repair replace clean and keep the Premises including without limitation the interior of the Building, any improvements and all the Lessor's partitions fixtures fittings plant and equipment including without limitation doors windows taps pipes door hinges fastenings light fittings power points light points light switches grease traps and gutters in good and substantial repair order and condition and where appropriate in good working order (including without limitation 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:

- (a) fair wear and tear (subject to clause 2.6.2 and except to light globes and fluorescent tubes); or
- (b) fire flood lightning storm tempest inevitable accident act of God or war damage (except where insurance moneys are irrecoverable in consequence of any act omission or default of the Lessee or any of the Lessee's Agents in which event the Lessee must rectify the damage promptly at its expense);

2.6.2 notwithstanding clause 2.6.1:

- (a) 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 or any of the Lessee's Agents cause damage or excessive wear to the floor coverings to 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); and
- (b) on demand from the Lessor the Lessee must ensure that suitable removable floor mats are placed under all chairs fitted with castors and used at all times that such chairs are used in the Premises;

2.6.3 the Lessee must keep and maintain at all times all lawns shrubs plants and gardens comprised in the Premises neat tidy well trimmed and pruned and to water and nurture them on such occasions as they require to subsist and flourish;

2.6.4 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;

2.6.5 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);

2.6.6 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;

- 2.6.7 the Lessee must at the end of every 3 years during the Term and in any event immediately prior to the expiration of the Term or the surrender of this Lease or within 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) in 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;
- 2.6.8 if the Lessee fails to comply with this obligation then the Lessor may on giving 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;
- 2.6.9 if the Lessee requires the Lessor to carry out any works which are the responsibility of the Lessee under this clause 2.6 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;

## 2.7 Yielding Up

- 2.7.1 at or immediately before the expiration of the Term or earlier surrender or termination of this Lease to:
- (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);
  - (b) surrender all keys for the Premises to the Lessor;
- 2.7.2 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 immediately make good any resulting damage;
  - (b) must, if required to do so by the Lessor, remove the alterations and additions in and to the Premises or the Land effected by or on behalf of or at the request of the Lessee or a previous occupier and reinstate the Premises and the Land 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 Land and immediately make good any resulting damage;
  - (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 and any alterations additions fixtures fittings plant and equipment not removed by the Lessee either as of right or by requirement of the Lessor will at the Lessor's election be deemed abandoned and be and become owned by the Lessor absolutely;

## 2.8 Airconditioning

- 2.8.1 where any plant machinery or equipment for heating cooling or circulating air or any related services controls or appliances are provided or installed by the Lessor in the Premises or in the Building for the benefit of the Premises ('**Airconditioning Plant**') subject to the RCLA:
- (a) to pay all costs and expenses (other than those included in the Operating Expenses) of and incidental to the operation servicing maintenance replacement and repair of and consumption of electricity by the Airconditioning Plant;
  - (b) to pay all costs and expenses (charged at an hourly rate determined by an independent contractor engaged by the Lessor) associated with the operation of the Airconditioning Plant between 6:00 pm and 8:00 am Monday to Friday and at any time on public holidays and weekends;
  - (c) if required by the Lessor to enter into a service and maintenance contract in respect of the Airconditioning Plant which contract must be first approved by the Lessor (such approval not to be unreasonably withheld);
- 2.8.2 to comply with and observe the reasonable requirements of the Lessor in respect of the Airconditioning Plant;
- 2.8.3 that 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 Airconditioning Plant at any time for any reason and the Lessee acknowledges that the Lessor does not warrant that the Airconditioning Plant (if any) is suitable or adequate for the business to be conducted in the Premises by the Lessee;
- 2.8.4 to the extent of the Lessor's control the use and operation of the Airconditioning Plant will at all times be at the discretion of the Lessor but the Lessor must use reasonable endeavours to keep the Airconditioning Plant in operation at all times between 8:00 am and 6:00 pm Monday to Friday (inclusive) other than public holidays;
- 2.8.5 to permit the Lessor and all persons authorised by the Lessor at all reasonable times on giving to the Lessee reasonable prior notice (except in the case of emergency where no notice is required) to enter the Premises to view the state of repair of the Airconditioning Plant and there remain for the purpose of carrying out any necessary or desirable maintenance servicing or repair to or replacement of the Airconditioning Plant;

## 2.9 Cleaning

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

- 2.9.1 cause the Premises to be cleaned regularly in a proper and workmanlike manner and kept clean and free from dirt and rubbish;
- 2.9.2 keep and maintain clean and in good order repair and condition all fittings plant furnishings 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; and
- 2.9.3 store and keep all waste materials and garbage in proper receptacles for it and to arrange for the regular removal of it from the Premises;

## 2.10 To Repair Damage

- 2.10.1 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;
- 2.10.2 the Lessee must at the cost of the Lessee from time to time immediately replace all damaged or worn out light globes and fluorescent tubes;

- 2.10.3 the Lessee must immediately repair and replace broken glass in the Premises including external windows, with glass of the same or similar quality;

## 2.11 Statutory Requirements

- 2.11.1 subject to the RCLA the Lessee must promptly and efficiently satisfy comply with and observe all present and future laws and the requirements directions and orders of any governmental semi-governmental civic health safety environmental licensing or other authority with competent jurisdiction relating to or affecting the use or condition of the Premises or the occupancy by the Lessee of the Premises whether such compliance or obligations are imposed on the owner or occupier of the Premises;
- 2.11.2 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, nothing in this Lease will relieve the Lessee of its obligation to obtain all necessary statutory consents and approvals from the relevant authority having jurisdiction in relation to the activity the subject of a consent obtained from the Lessor;

## 2.12 Liquor Licence

- 2.12.1 the Lessee will not do anything or fail to do anything which will or may result in Special Circumstances Licence 51205425 or any other licences (together referred to as the '**Licence**') issued under the *Liquor Licensing Act 1997* or any other legislation that is enacted to replace such legislation (together referred to in this clause as 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;
- 2.12.2 the Lessee will not without the prior written consent of the Lessor (which consent may be withheld in the Lessor's absolute discretion) transfer, sell, or remove to other premises, or offer to transfer, sell, or remove to other premises, the Licence;
- 2.12.3 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 without the consent of the Lessor;
- 2.12.4 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;
- 2.12.5 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 conditions of the Licence;
  - (c) all directions and requirements relating to the Premises or the Licence of the Licensing Authority or any inspector officer or person appointed pursuant to the provisions of the Act;
- 2.12.6 when this Lease expires, or if this Lease is surrendered or terminated for any reason, the Lessee will:
- (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;

- 2.12.7 during the Term the Lessee will supply to the Lessor within seven (7) days after forwarding the same to the Licensing Authority a copy of every statutory declaration and every other form document letter or application required to be forwarded to the Licensing Authority pursuant to the Act;
- 2.12.8 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 Licence or other fees payable under the Act on the day or days fixed for payment of the same;
- 2.12.9 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 under or given by virtue of the Act 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;
- 2.12.10 in respect of any Legal Notice, the Lessor will 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;
- 2.12.11 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 in the Lessor's absolute discretion may think fit;
- 2.12.12 all costs and expenses incurred by the Lessor under the preceding sub-clauses must immediately be paid by the Lessee or if paid by the Lessor are recoverable immediately on demand by the Lessor from the Lessee;
- 2.12.13 for all the purposes of this clause, the Lessee irrevocably nominates, constitutes and appoints the Lessor the attorney and agent of the Lessee with power to appoint substitutes;
- 2.12.14 if at any time during the Term the Licence is suspended or revoked or ceases to be in force ('**Licence Termination**'):
  - (a) as a result of or in consequence or by reason of any decision of the licensing authority as defined in the Act; or
  - (b) upon any ground whatsoever under or by virtue of the Act or any other statute, then the Lessor or the Lessee (but in the case of the Lessee only if such Licence Termination has not occurred due to any act or omission of the Lessee or the Lessee's Agent), notwithstanding anything contained in any statute to the contrary, may at any time within three (3) calendar months after such suspension or revocation, give written notice to the other of the intention of the Lessor or the Lessee as the case may be to terminate or surrender this Lease, and in that case:
    - (c) the cancellation or surrender will take effect as on the date specified in such notice being a date not less than one (1) calendar month after the date of posting of such notice;
    - (d) on the date referred to in the notice, this Lease will absolutely cease and determine;
    - (e) upon this Lease determining under this clause, the Lessor and Lessee agree to execute, at the cost of the Lessee (including any stamp duties and fees) a



surrender in appropriate form (including registrable form if this Lease is registered) of the Lease;

- (f) nothing contained in this clause or in any such surrender will release the Lessee from its obligation to pay all Rent and arrears of Rents, and any other monies that would otherwise be payable under this Lease during the balance of the Term;
- (g) the Lessor may take proceedings in any court of law to compel the performance of the covenants conditions provisions and agreements contained in this Lease and on the part of the Lessee unperformed at the date of such surrender or cancellation, and this Lease, notwithstanding the same may have been cancelled or surrendered, may be given in evidence;

## 2.13 Use Of Facilities

- 2.13.1 the Lessee must not use nor permit the Lessee's Agents or any person on the Premises by lawful licence of the Lessee to use the lavatories toilets sinks drains and other plumbing ('**Facilities**') in the Premises for any purpose other than that for which they were constructed or provided;
- 2.13.2 the Lessee must not deposit or permit to be deposited any rubbish or other material in the Facilities and any damage caused to the Facilities by such misuse must be made good by the Lessee immediately;

## 2.14 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;

## 2.15 Signs

- 2.15.1 the Lessee must not without the prior approval in writing of the Lessor and all appropriate and necessary authorities erect display affix or exhibit on or to the Premises any sign advertisement name or notice whether visible from outside the Premises or only visible from inside the Premises, or alter any such existing sign advertisement name or notice;
- 2.15.2 the Lessee must not without the approval of the Lessor in writing 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;
- 2.15.3 the consent or approval of the Lessor as the case may be to any matter or thing to which such consent or approval is required under this clause must not be unreasonably withheld;
- 2.15.4 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 painting displaying affixing placing exhibiting or removal;

## 2.16 Alterations And Additions

- 2.16.1 the Lessee must not without the previous consent in writing of the Lessor first had and obtained make any alteration or addition in or to the Premises or any part of the same nor will the Lessee without the consent in writing of the Lessor which consent must not be unreasonably withheld install or alter any partitioning work, fixed equipment or other fixed installation in or on the Premises;
- 2.16.2 where consent is given by the Lessor under this clause 2.16:
  - (a) such partitioning work, fixed equipment, fixed installation, alteration or addition must be done or made in accordance with the approval so given;

- (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;
- (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;

2.16.3 all partitioning work, fixed equipment, fixed installation, alteration or addition installed by the Lessee:

- (a) will be and remain the property of the Lessee;
- (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;

## 2.17 Plumbing And Electrical Installations

without affecting the generality of the preceding clauses the Lessee must not without the prior consent of the Lessor install any water gas or electrical fixtures equipment or appliance or any apparatus for illuminating air conditioning heating cooling or ventilating the Premises other than kitchen appliances for preparation of food or beverages and office appliances or equipment reasonably necessary for the execution of normal practices of the Permitted Use;

## 2.18 Heavy Objects, Dangerous Substances

2.18.1 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 floors or walls or any other parts of the Premises or the Land (including the Building);
- (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;
- (d) any plant or machinery which may overload the electrical services to the Premises;

2.18.2 before bringing any heavy machinery or other plant or equipment onto the Premises:

- (a) 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 (for this purpose the Lessor may employ the services of its architects or engineers to ascertain the safest and most favourable and convenient method of routing installing and locating such machinery); and
- (b) the Lessee must observe and comply with all such directions that the Lessor may give under this clause;

## 2.19 Access Of Lessor

2.19.1 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 reasonable notice (except in the case of emergency when no notice will be required) to enter upon the Premises and view the state of its repair and if the Lessor considers that repairs are required:

- (a) the Lessor may serve upon the Lessee a notice in writing of any defect the repair of which is the Lessee's obligation under this Lease requiring the Lessee within a reasonable time to repair the same defect;

- (b) in default of the Lessee so doing it will be lawful for the Lessor (without any obligation on the part of the Lessor so to do) for the time being to enter the Premises and execute the required repairs as if it were the Lessee and for that purpose the Lessor its architects contractors workmen and agents may enter upon the whole or any part of the Premises and there remain for the purpose of doing erecting or effecting any such thing; and
  - (c) any reasonable expenses and costs of carrying out such work will immediately be payable by the Lessee to the Lessor;
- 2.19.2 the Lessee permits the Lessor and any person authorised by the Lessor at all times on reasonable notice:
  - (a) to carry out repairs renovations maintenance modifications extensions or alterations to the Premises or to any part of the Premises or to the Land or to any part of the Land deemed necessary or desirable by the Lessor including:
    - (i) enlarging, varying or reducing the dimensions of the Building;
    - (ii) requiring the acquisition or disposal of any part of the Land;
    - (iii) permanently encroaching upon the Common Area or any part of the Common Area and upon any carpark on the Land;
    - (iv) using the air space above or below any part of the Common Area, the Building, any carpark, or any other part of the Land;
    - (v) erecting any additional floors above or below any part of the Building;
    - (vi) providing multi-level carparking facilities; and
    - (vii) interrupting the water, gas, electrical, air-conditioning or other services to the Premises,
  - and
  - (b) for any of these purposes to enter the Premises with or without its architects contractors workmen and agents;
- 2.19.3 in the course of carrying out any repairs renovations maintenance modifications extensions or alterations to the Premises, the Land or to any part of the Premises or Land, pursuant to this clause the Lessor must use its best endeavours not to cause undue inconvenience or disturbance to the Lessee;
- 2.19.4 if the RCLA applies to this Lease then the Lessor may not commence to carry out any alteration or refurbishment to the Premises (other than routine maintenance or repairs) that is likely to adversely affect the business of the Lessee unless:
  - (a) the Lessor has notified the Lessee in writing of the proposed alteration or refurbishment at least 1 month before it is commenced; or
  - (b) the alteration or refurbishment is necessitated by an emergency and the Lessor has given the Lessee the maximum period of notice that is reasonably practicable in the circumstances;
- 2.19.5 subject to clause 2.19.4 in an emergency the Lessor may without notice enter the Premises to carry out any works deemed necessary by the Lessor;
- 2.19.6 subject to the RCLA 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 3 or otherwise in consequence of such entry or in execution of any of the works contemplated by this clause;

## 2.20 Rules And Regulations

- 2.20.1 the Lessee will observe the Rules and Regulations;
- 2.20.2 failure by the Lessee to observe the Rules and Regulations will constitute a breach of the terms of this Lease;

## 2.21 **Plate Glass Insurance**

the Lessee will immediately insure and keep insured against breakage all the plate glass in the Premises for its replacement value in the joint names of the Lessor and the Lessee and for their respective rights and interests at the Lessee's expense;

## 2.22 **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;

## 2.23 **Public Liability Insurance**

the Lessee must immediately effect and keep current at all times in respect of the Premises a Public Risk Policy insuring the Lessor against such risks as the Lessor deems appropriate 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 in the joint names of the Lessor and the Lessee and for their respective rights and interests with a company approved by the Lessor which approval must not be unreasonably or capriciously withheld;

## 2.24 **General Provisions About Insurance**

2.24.1 the Lessee will:

- (a) pay to the Lessor immediately upon demand all extra amounts paid or payable by the Lessor under any of such insurance policies relating to any accident, incident or claim caused or contributed to by the Lessee or any of the Lessee's Agents;
- (b) not at any time do or permit to be done anything in or about the Building or the Land that will or may result in any Lessor's insurance in respect of the Building or Land becoming void or voidable or any rate of premium for any such insurance being increased;

2.24.2 the Lessee will:

- (a) on demand deliver the policies of all insurances required under this Lease to the Lessor and produce the receipt or Certificate of Currency for every premium in respect of such insurances to the Lessor; and
- (b) where appropriate, expend all moneys received under any insurances in reinstating the insured items;

2.24.3 all insurances required of the Lessee under this Lease must be with a company approved by the Lessor, which approval will not be unreasonably or capriciously withheld;

## 2.25 **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;

## 2.26 **Indemnities**

subject to the RCLA the Lessee indemnifies the Lessor and the Lessor's Agents from and against all and any actions, claims, demands, losses, damages, costs and expenses for which the Lessor or any of the Lessor's Agents are or may be or become liable in respect of or arising from:

2.26.1 the negligent use, misuse, waste or abuse of the water, electricity, lighting and other services and facilities to or in the Premises by the Lessee or any of the Lessee's Agents;

- 2.26.2 overflow or leakage of water (including rain water) in or from the Premises but having origin within the Premises caused by or attributed to any act or omission on the part of the Lessee or any of the Lessee's Agents;
- 2.26.3 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;
- 2.26.4 the death of or injury to any person or loss of or damage to the property of 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;
- 2.26.5 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 or results from the wilful or negligent act or omission of the person seeking such indemnity;

## 2.27 Release

- 2.27.1 subject to the RCLA the Lessee occupies uses and keeps the Premises at the risk of the Lessee and the Lessee releases to the full extent permitted by law the Lessor and the Lessor's Agents from all and any claims demands and damages of every kind resulting from any accident, damage or injury occurring in the Premises except where deriving from any wilful or negligent act of the Lessor or any of the Lessor's Agents;
- 2.27.2 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 Land unless deriving from any structural defect in the Land (not caused or contributed to by the Lessee or any of the Lessee's Agents); 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, airconditioning, 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;

## 2.28 Reletting

- 2.28.1 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;
  - (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 over the Premises;

- 2.28.2 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;

## 2.29 Fire Precautions

- 2.29.1 subject to the RCLA 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 authority (whether governmental municipal civic or otherwise) 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 body having jurisdiction in relation to the Premises;

- 2.29.2 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 subject to the RCLA to 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;

- 2.29.3 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;

- 2.29.4 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;

## 2.30 Indemnity In Relation To Exercise Of Lessor's Powers

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;

## 2.31 Pests

the Lessee must exterminate and keep the Premises free from all rats and mice and other vermin or pests;

## 2.32 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;

## 2.33 Superior Or Concurrent Interest

the Lessee must:

- 2.33.1 permit any person having any interest in the Land 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
- 2.33.2 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;

## 2.34 Security

- 2.34.1 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;

- 2.34.2 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;
- 2.34.3 all such equipment, systems and installations (except the Lessor's fixtures and fittings) will remain the property of the Lessee who will be responsible for all costs associated with the purchase, installation, alteration or modification of any new (and if applicable existing) equipment, system or installation and all maintenance and monitoring of it;
- 2.34.4 the Lessee must pay to the Lessor all charges imposed on the Lessor for any security alarm callout to or affecting the Premises;

#### 2.35 **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 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;

#### 2.36 **Guarantee**

- 2.36.1 unless Item 12 of the Schedule is not applicable, 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 requires;
- 2.36.2 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 requires;

#### 2.37 **Bank Guarantee**

- 2.37.1 unless Item 13 of the Schedule is not applicable, to deliver to the Lessor on or before execution of this Lease by the Lessee an enforceable, irrevocable and continuing bank guarantee ('**Bank Guarantee**') in favour of the Lessor given by an Australian domiciled bank carrying on business in South Australia ('**Bank**') by which 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 ### months' Rent payable under this Lease as at the date of demand plus the Lessee's Proportion of Operating Expenses payable under this Lease as at the date of demand plus GST (but disregarding any rent incentives or rebates) (and updated by a replacement bank guarantee as at each renewal of the Term for an equivalent amount being ### months' Rent calculated in accordance with the rent then payable for the first year of the relevant further term) ('**Guaranteed Amount**');;
- 2.37.2 that 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;
- 2.37.3 that if the Lessor makes such demand or if the amount of the Bank Guarantee is less than the Guaranteed Amount the Lessee must within 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 on the terms set out in this clause;
- 2.37.4 that the Lessee will not be entitled to re-delivery nor to request re-delivery of the Bank Guarantee until one month 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;

- 2.37.5 that 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;
- 2.37.6 that acceptance by the Lessor of the Bank Guarantee will not operate to waive any breach or default of this Lease by the Lessee;
- 2.37.7 that this clause will not in any way limit restrict or prejudice the rights and remedies of the Lessor in respect of any breach or default of this Lease by the Lessee;

## 2.38 **Minimum Trading Hours**

at all times during the Minimum Trading Hours (except in the event of an emergency), to keep the Premises open for business and offer from the Premises those types of goods and services generally provided by good cafe businesses at those times;

## 2.39 **Maximum Trading Hours**

at all times during the Term, not to open or permit the Premises to be open for business outside the Maximum Trading Hours;

## 2.40 **Obligation to Cater**

- 2.40.1 on receiving no less than seven (7) days notice from the Lessor, the Lessee must provide for sale (on the Lessee's usual terms, including as to price, or otherwise on terms approved by the Lessor acting reasonably) to attendees of events held by the Lessor anywhere on the Land (even if outside the Premises or the Seating Area) such products and services as are reasonably stipulated or approved by the Lessor from such place or places on the Land and on any such other terms as are stipulated by the Lessor (acting reasonably) from time to time for this purpose;
- 2.40.2 to comply with all reasonable directions from the Lessor or the Lessor's Agents in relation to all matters incidental to the provision of products and services by the Lessee under clause 2.40.1 (including, without limitation, directions in relation to the responsible service of alcohol);
- 2.40.3 to comply with and be bound by all of the provisions of this Lease (including, without limitation, clauses 2.26 and 2.27) in respect of the provision of products and services by the Lessee under clause 2.40.1, as though the areas from where the products or services are provided, for the purposes of this clause, formed part of the Premises for the duration of the Lessee's use of those areas;

## 2.41 **Meetings**

to attend:

- (a) meetings with the Lessor, as and when required by the Lessor, acting reasonably, in order to discuss any matters in connection with this Lease;
- (b) meetings (generally known as 'precinct meetings') with the Lessor, and the owners, managers or other representatives of the entities generally known as the Marion Shopping Centre, GP Plus, and the State Aquatic Centre, whenever those meetings occur (being, in the normal course, once every six (6) weeks);

## 2.42 **Alignment with Council Objectives**

to ensure that operations of the Premises align, and are at all times consistent, with Council Objectives as detailed in Appendix C;

## 2.43 **Agreed Procedures**

to ensure that operations of the Premises adhere to those procedures set by the Lessor and agreed by the Lessee with regard to, but not limited to, building security, emergency evacuation, function catering and venue hire (and the Lessee acknowledges and agrees that this clause will not limit the rights of the Lessor or the obligations of the Lessee under any other provision of this Lease, including the Lessor's right to issue Rules and Regulations from time to



time under clause 7.8.1 including in relation to building security, emergency evacuation, function catering and venue hire, and the Lessee's obligation to comply with all Rules and Regulations under clause 2.20).

### 3. LESSOR COVENANTS WITH THE LESSEE

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

#### 3.1 Quiet Possession

that the Lessee paying the Rent and duly and punctually observing and performing the terms of this Lease will and 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;

#### 3.2 Ancillary Rights

the Lessee may exercise and enjoy the Lessee's Ancillary Rights;

#### 3.3 Rates and Taxes

the Lessor must pay all rates and taxes and other outgoings imposed on or payable in respect of the Land (excluding amounts payable by the Lessee under any other clause);

#### 3.4 Catering

that if the Lessor conducts any events on the Land during the term of this Lease that involve the provision of food or beverages to attendees, and the Lessor does not issue a direction under clause 2.40, the Lessor will use reasonable endeavours to negotiate with the Lessee in order to engage the Lessee to provide such food or beverages, provided that the Lessor may engage the services of any third party to provide such food and beverages if an agreement has not been reached with the Lessee under this clause within a reasonable period of time prior to the proposed event (to avoid doubt, the Lessee acknowledges and agrees that this clause does not apply to events conducted by the Lessor or the Lessor's Agents on that part of the Land where the art gallery is situated).

### 4. ESSENTIAL TERMS, RE-ENTRY, BREACH, DAMAGES

#### 4.1 Essential Terms

4.1.1 Clauses 2.1, 2.2, 2.3, 2.4, 2.5, 2.6, 2.7, 2.8, 2.9, 2.10, 2.11, 2.12, 2.15, 2.16, 2.18, 2.19, 2.20, 2.22, 2.23, 2.24, 2.33, 2.34, 2.35, 2.36, 2.37, 2.38, 2.39, 2.40, 2.41, 2.42, 2.43, 11.4 and 12 are of a fundamental character and are essential terms of this Lease.

4.1.2 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.

#### 4.2 Termination and Re-Entry

If:

4.2.1 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);

4.2.2 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;

4.2.3 (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 within the meaning of the *Corporations Act 2001 (Cth)* (as amended from time to time);

4.2.4 (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);

4.2.5 the Premises are left unoccupied for 14 days without the Lessor's consent;

4.2.6 execution is levied against the Lessee and not discharged within 14 days;

4.2.7 any property in or on the Premises is seized or taken in execution under any judgment or other proceedings; or

4.2.8 any event described in clauses 4.2.4 to 4.2.7 (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:

4.2.9 the Lessor will be 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

4.2.10 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.

#### 4.3 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.

#### 4.4 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 or any extension thereof or any holding over period.

#### 4.5 No Bar To Recovery

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

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

#### 4.6 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 following such termination.

#### 4.7 Mitigation

- 4.7.1 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.
- 4.7.2 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.
- 4.7.3 The Lessor's conduct in attempting to mitigate its damages will not constitute acceptance of the Lessee's breach of repudiation or a surrender by operation of law.

#### 4.8 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.

#### 4.9 Abandoned Chattels

Subject to the RCLA any chattels 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.

#### 4.10 Default Interest And Fees

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

- 4.10.1 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;
- 4.10.2 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.

#### 4.11 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 irrevocable 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:

- 4.11.1 for the purpose of giving full effect to such termination, re-entry and repossession;
- 4.11.2 to execute a surrender of this Lease and to procure its registration and to record this Power of Attorney; and
- 4.11.3 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 (including without limitation if necessary to execute and lodge an application to dispense with the Lessee's registered copy of the Lease),

and all and whatsoever such attorney will lawfully do or purport to do or cause to be done by virtue of the appointment is by this clause ratified and confirmed.

#### 4.12 Damage And Destruction

- 4.12.1 Subject to the RCLA if:

- (a) the Premises are wholly or substantially damaged or destroyed then the Lessor may at its option terminate the Lease by giving the Lessee 7 days' prior notice to that effect;
- (b) the Premises are damaged or destroyed so as to render the Premises wholly or partially inaccessible or unfit for use by the Lessee and the Lessor gives the Lessee notice that the Lessor considers that the damage is such as to make its repair impracticable or undesirable then either the Lessor or the Lessee may terminate this Lease by giving the other not less than 7 days' prior notice to that effect; or
- (c) this Lease is not terminated pursuant to clauses 4.12.1(a) or 4.12.1(b) but the Lessor fails to repair the damage within a reasonable time after the Lessee has given the Lessor notice to do so (provided that the Lessor will not be obliged to repair the damage) then the Lessee may terminate this Lease by giving the Lessor 7 days' prior notice to that effect,

then this Lease will terminate 7 days after the giving of any such notice of termination (or such longer period as the Lessor and Lessee may agree).

- 4.12.2 In the event of termination under clause 4.12.1 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.
- 4.12.3 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 Operating Expenses 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. If such proportion cannot be agreed between the Lessor and the Lessee such proportion must be determined by a Valuer.
- 4.12.4 Notwithstanding clauses 4.12.1, 4.12.2 and 4.12.3 if the damage or destruction to the Premises results from the wrongful act or negligence of the Lessee or any of the Lessee's Agents no proportion of the Rent and Operating Expenses will cease and suspend unless the Lessor is entitled to fully recover all such loss of Rent and Operating Expenses under an insurance policy to which the Lessee contributes to the premium.

#### 4.13 Costs And Remedies On Default

- 4.13.1 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.
- 4.13.2 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.

### 5. RENEWAL

- 5.1 On the written request of the Lessee made not less than 6 nor more than 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 an extension of this Lease for a further term for the period set out in Item 11 of the Schedule subject to and upon the same terms and conditions as are contained in this Lease save for the exclusion of this clause giving the Lessee a right of renewal.

- 5.2 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 for the said extension will be a condition precedent to the exercise by the Lessee of the Lessee's right to request an extension under this clause.
- 5.3 If this Lease is renewed pursuant to clause 5.1 and on the date of commencement of the renewed term the Rent has not been reviewed pursuant to clause 6 then the renewal will be effective notwithstanding that the Rent will be reviewed at a subsequent date.
- 5.4 Time will be of the essence in respect of this clause 5.

## 6. RENT REVIEW

- 6.1 The Rent ('A') will be reviewed as at each of the dates specified in Item 10A of the Schedule (each of such dates being referred to as a '**CPI Review Date**') in accordance with the following formula:

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

Where:

'B' is the amount of the annual Rental payable under this Lease during the 12 months immediately preceding the relevant CPI Review Date; and

'C' is the CPI for the quarter ending immediately preceding the relevant CPI Review Date (such quarter end date being called '**the quarter end date**'); and

'D' is the CPI for the quarter ending 12 calendar months preceding the quarter end date.

- 6.2 In the event that:

- 6.2.1 the CPI ('**Original Index**') ceases to be published; or

- 6.2.2 the basis upon which the Original Index is calculated is substantially changed,

then unless otherwise mutually agreed the Lessor and the Lessee must immediately request the President or other Executive Officer for the time being of the Institute of Actuaries of Australia (or if the said Institute has ceased to exist then any other body corporate or unincorporated formed for similar purposes as that Institute) to appoint an actuary to consider and determine:

- 6.2.3 what cost of living or other Index (if any) must be applied under clause 6.1 in lieu of the Original Index in order to achieve the intention of the parties that an adjustment of the Rent hereby reserved must be made as provided in clause 6.1 and that the basis of adjustment be the movements in the Consumer Price Index (All Groups) for Adelaide ('**the New Index**'); and

- 6.2.4 what conversion factors adjustments or other modifications must be made to the calculations to be made pursuant to clause 6.1 so that upon the application of the New Index in lieu of the Original Index the resultant adjustments are consistent with the intent of the parties under this Lease.

- 6.3 The annual Rent payable for each year commencing on each of the dates specified in Item 10B of the Schedule (each of such dates being referred to as a '**Market Review Date**') will be reviewed to the Current Market Rent as at the relevant date as follows:

- 6.3.1 at any time being not more than 3 months before the Market Review Date the Lessor may give notice to the Lessee setting out the amount which the Lessor assesses to be the Current Market Rent and unless within 14 days from the date on which the Lessor gives that notice to the Lessee (in respect of which time will be of the essence) 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;

- 6.3.2 if, within the time period required by clause 6.3.1, the Lessee gives notice to the Lessor that the Lessee disputes the Lessor's assessment of the Current Market Rent, the annual Rent for the Premises will be the Current Market Rent as determined by a Valuer, and the Valuer's appointment will 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 (if relevant including without limitation incentives and concessions) which the Valuer has considered and the full reasons for the determination;
  - (e) the determination must be made within 30 days following the Valuer's acceptance of the appointment; and
  - (f) if the Valuer fails to make the determination within 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 6.
- 6.4 All costs incurred in connection with the valuation in accordance with clause 6.3 must be paid by the Lessor and the Lessee equally unless the Valuer's determination is equal to or higher than the amount specified by the Lessor in the notice issued pursuant to clause 6.3.1 in which case all valuation costs must be borne by the Lessee.
- 6.5 The reviewed annual Rent finally determined in accordance with this clause 6 will be payable as and from the relevant review date and any adjustment necessary in respect of any underpayment of any instalment paid after any review date at the rate previously applicable must be paid by the Lessee to the Lessor immediately upon the new Rent applicable being agreed or determined (as the case may be). The Lessee must pay the current instalments of the Rent previously applicable pending determination of the new Rent as is provided in this clause 6.
- 6.6 The failure of the Lessor to require, or notify the Lessee of, a review of the Rent as at and from any review date will not prevent the Lessor at any subsequent time from requiring the Rent to be reviewed pursuant to this clause as at and from the review date.

## 7. GENERAL

### 7.1 Managing Agent

- 7.1.1 The Lessor may from time to time appoint a managing agent to manage the Premises.
- 7.1.2 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.
- 7.1.3 Any communication from the Lessor to the Lessee will to the extent of any inconsistency supersede any communication from the managing agent.

### 7.2 Waiver

That 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.

### 7.3 Notice

- 7.3.1 Without prejudice to any other means of serving notice any notice required to be served under this Lease will be sufficiently served:
- (a) if 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) if to the Lessor, by personal service on the Lessor (or if it is a body corporate on a director, secretary or other officer of the Lessor) or by post or facsimile transmission to the Lessor's registered office (if a body corporate) or to the Lessor's last known place of business or residence.
- 7.3.2 Any notice may be signed on the party's behalf by its attorney, director, secretary or other officer or solicitor.
- 7.3.3 A notice by post is deemed served at the time when it ought to be delivered in the due course of post.
- 7.3.4 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.
- 7.3.5 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.

### 7.4 Entire Agreement

Subject to clause 7.6 of this Lease:

- 7.4.1 the terms of this Lease and any consents given pursuant to this Lease comprise the whole of the agreement between the Lessor and Lessee;
- 7.4.2 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
- 7.4.3 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.

### 7.5 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.

### 7.6 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.

### 7.7 Electricity

- 7.7.1 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*).

7.7.2 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.

7.7.3 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.

7.7.4 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.

7.7.5 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.

## 7.8 Rules And Regulations

7.8.1 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, the Building or the Land;
- (b) the preservation of good order in the Premises, the Building or the Land;
- (c) the policing and regulating of traffic and the parking of motor vehicles on or near the Premises, the Building or the Land;
- (d) the external appearance of the Premises, the Building or the Land; and
- (e) any other matters that relate to the Premises, the Building or the Land.

7.8.2 The Rules and Regulations will, on and from the Commencement Date, be those that are set out in Appendix A to this Lease.

7.8.3 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.

## 8. RCLA - VARIOUS

### 8.1 Receipt

If the RCLA applies to this Lease, the Lessee acknowledges that:

- 8.1.1 prior to the Lessor and Lessee entering into negotiations concerning this Lease the Lessee received a copy of the proposed Lease; and
- 8.1.2 prior to the Lessee executing this Lease the Lessee received a duly completed written statement in the form required under and pursuant to the RCLA and the Regulations under the RCLA.



## 8.2 No Warranty

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.

## 9. HOLDING OVER

- 9.1 If the Lessee holds over after the expiration or sooner determination of the Term with the consent (express or implied) 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 annual Rent being the amount 'A' calculated in accordance with the following:

$$A = B \times 1.10$$

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 the 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 granted by the Lessor pursuant to any provisions of this Lease will be the consent of the Lessor in its capacity as the owner of the Land only and will not constitute consent by the Lessor as the relevant authority having jurisdiction in relation to the granting of statutory approvals in respect of the relevant matter the subject of consent.
- 10.2 The Lessee must in any event 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.

## 11. LICENCE FOR SEATING AREA

- 11.1 In consideration of the terms of this Lease, the Lessor grants to the Lessee the non-exclusive liberty and licence for the Term in common with all other persons authorised by the Lessor to use the Seating Area during the Minimum Trading Hours as a seated area for customers of the cafe, together with the right and liberty to exercise the rights of ingress to and egress from the Seating Area subject to the terms and conditions in this clause 11.
- 11.2 The Lessor may (acting reasonably) limit or restrict the Lessee's rights under clause 11.1 if the Lessor wishes to use part of the Seating Area for a limited period of time and for purposes inconsistent with the Lessee's use during the Minimum Trading Hours, provided the Lessor has given the Lessee at least six (6) weeks' advance notice of the Lessor's intention to limit or restrict the Lessee's rights under clause 11.1 and details as to the limitation or restriction.
- 11.3 If the Lessee wishes to use the Seating Area outside of the Minimum Trading Hours (even if the proposed hours of use are within the Maximum Trading Hours), the Lessee must obtain the

prior written consent of the Lessor, and must comply with any conditions on which the consent is given (provided that the consent will not be unreasonably withheld, and any terms and conditions of the consent will not be unreasonable). The terms of such consent must not be altered, and such consent must not be revoked, on less than six (6) weeks' advance notice from the Lessor to the Lessee.

11.4 The Lessee covenants and agrees with the Lessor as follows:

11.4.1 to comply with all reasonable directions of the Lessor or the Lessor's Agents in relation to the Seating Area (including, without limitation, the location, type, appearance and related characteristics of any plant and equipment in the Seating Area, and the storage of same outside of the Minimum Trading Hours);

11.4.2 to comply with and be bound by all of the provisions of this Lease (including, without limitation, clauses 2.26 and 2.27) in respect of the Seating Area, as though the Seating Area, for the purposes of this clause, formed part of the Premises.

11.5 The term of the licence granted under this clause 11 is to be identical to the term of the Lease, such that the licence automatically terminates or ends when the Lease terminates or ends, and the licence is automatically renewed if the Lease is validly renewed.

11.6 The rights conferred on the Lessee by this clause 11 will rest in contract only and will not create in or confer upon the Lessee any tenancy or any estate or interest in the Seating Area or any part thereof and the rights of the Lessee will be those of a licensee only.

## 12. GOODS AND SERVICES TAX

12.1 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.

12.2 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.

12.3 The amount payable by the Lessee to the Lessor for, or in connection with, a Supply under this Lease does not include any GST.

12.4 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.

12.5 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.

12.6 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.

## 13. INTELLECTUAL PROPERTY

13.1 The Lessee covenants and agrees with the Lessor that the Lessee does not own nor is the Lessee entitled to any title, by implication or otherwise, in the Intellectual Property, and will not by registration or any other means establish or attempt to establish title or ownership in the Intellectual Property or in any similar or related names, logos, service marks or slogans.

13.2 The Lessor grants to the Lessee a licence to use the Intellectual Property during the Term.

13.3 Upon the termination or expiration of this Lease for any cause, the Lessee will cease to use the Intellectual Property and will take all necessary steps and sign all necessary documents to ensure that any licence to use is surrendered and the Lessor obtains unrestricted use and ownership of all of the Intellectual Property.

13.4 The Lessee appoints the Lessor the Lessee's attorney for the purposes of signing, completing, dating and lodging all forms necessary to be lodged with the Office of Business Affairs (SA) or its successor to effect the transfer or cessation of the Business Name to the Lessor.

13.5 The Lessee must not contest or challenge in any legal proceedings or otherwise the right of or proprietorship or ownership of the Lessor in the Intellectual Property.

**14. TERM LESS THAN FIVE YEARS**

If the RCLA applies to this Lease and if the Term of this Lease (including any further terms resulting from the exercise of rights or renewals) is less than 5 years:

14.1 this Lease excludes the operation of section 20B of the RCLA;

14.2 the Lessee acknowledges that:

14.2.1 it has received independent legal advice to explain the effect of and how section 20B of the RCLA would apply if this Lease did not contain the provision that excludes the operation of section 20B;

14.2.2 it was not acting under coercion or undue influence in requesting or consenting to the inclusion of such provision; and

14.2.3 it has given assurances to its solicitors that it was not acting under coercion or undue influence in requesting or consenting to the inclusion of such provision when instructing its solicitors in relation to such provision.

## **RULES AND REGULATIONS**

- |  |    |   |
|--|----|---|
| Exterior and Common Areas controlled by Lessor | 1. | The exterior of the Building, the area of the Land beyond the Premises, and the Common Area 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 regardless of whether it is visible from only inside the Premises or elsewhere which is in the opinion of the Lessor incongruous or unsightly or may detract from the general appearance of the Land will be erected constructed or maintained by the Lessee in the Land.  |
| Hanging articles                               | 3. | No towels or other similar articles will be hung out of the windows or upon the roof of the Premises.   |
| Animals  | 4. | The Lessee must not bring or permit any person to bring or leave in the Land any animal unless the same must be retained in proper custody and control and provided that there must be no breach of any law.  |
| Musical instruments                            | 5. | The Lessee must not play or permit any person to play any musical instrument in or about the Land except with the consent of the Lessor.  |
| Address and telephone numbers                  | 6. | The Lessee must advise the Lessor and the managing agent of the Land for the time being 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                               | 7. | 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 caretaker employees servants or workmen to fasten same if left insecurely fastened.   |
| Equipment                                      | 8. | The Lessee must not do or permit or cause or suffer to be done and the Lessee must refrain or prevent the Lessee's Agents from manipulating interfering with or attempting to control any of the electrical or mechanical equipment in the Land other than in the Premises.   |

Keys	9.	All keys belonging to the Land (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	10.	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.
Obstruction	11.	The Lessee must not in any way obstruct or permit the obstruction of any walkways pavements entrances passages courts corridors service-ways vestibules halls roads docks stairways hoists fire or escape doors or other parts of the Common Area or any appurtenances or conveniences.
Illumination	12.	The Lessee must not in any way cover or obstruct any lights skylights windows or other means of illumination of the Common Area or of the Land generally.
Deliveries	13.	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 Common Area and at such times as the Lessor may from time to time direct.
Throwing of articles	14.	The Lessee must not throw or permit to be thrown or to be dropped or to fall any article or substance whatsoever from or out of the Premises or the Common Area or any part of the same and must not place upon any sill ledge or other like part of the Premises or the Common Area any article or substance.
Clean	15.	The Lessee will keep clean and free from dirt and rubbish such parts of the Common Area or any public footpath or way as immediately adjoin the Premises.
Deliveries	16.	The Lessee must not deliver nor permit to be delivered to the Premises any articles or goods whether for the purposes of its business or otherwise during such hours as may be forbidden by the Lessor for that purpose. However the Lessee will be at liberty to take delivery of goods at any time provided that such goods are unloaded at such loading and unloading area or areas at the rear of the Premises or elsewhere as may from time to time be nominated by the Lessor for that purpose but not in the car parking areas.
Theft and robbery	17.	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.

## **APPENDIX B**

### **PLAN OF PREMISES**

## APPENDIX C

### COUNCIL OBJECTIVES

#### 1. KEY OBJECTIVES

Signatures Café is located within the Marion Cultural Centre which is a City of Marion facility. The Lessee will acknowledge and embrace the philosophies, objectives and practices of a number of key City of Marion initiatives.

##### **Commitment to Customer Service and a Constructive Working Culture**

The City of Marion is committed to providing its Customers with a consistently professional, friendly and high-quality service. Our aim is to anticipate and, where possible, exceed our Customers' needs and expectations.

As an organisation we understand that constructive leadership management and teamwork are critical to maximizing community benefit and employee satisfaction. We work towards building a constructive culture, which for us, means showing balanced concern for getting the job done (task skills) and for satisfying the needs of the individual or group (people skills).

Corporate Values that are important to the success of the Organisation include:

- Being open, ethical and accountable.
- Valuing the customer.
- Being committed and enjoying getting the job done.
- Seeking and celebrating achievement.
- Working together in partnership.
- Showing leadership.
- Respecting the views, opinions and capabilities of others.
- Continuing to learn and improve.
- Embracing sustainability.

##### **Cooperation across the Marion Cultural Centre Services and the Domain precinct**

The City of Marion is committed to providing a Cultural Centre that is a thriving, regional hub of community arts and culture; a place to learn, meet, gather, participate and communicate. Signatures Café plays a vital role in delivering on this vision. The Café is a community meeting place and services patrons of the Marion Library, Domain Theatre and functions rooms and Gallery M.

The Lessee will be required to work closely with City of Marion staff and Gallery M staff to ensure a coordinated service across the Cultural Centre as a whole. This dynamic relationship will recognise the commercial imperatives of the café operator balanced with the community and cultural deliverables of the Cultural Centre as a community facility.

The City of Marion is also committed to positive relationships with services across the Domain precinct including the South Australian Aquatic and Leisure Centre, GP Plus, Westfield Marion and other nearby agencies such as Centrelink, Service SA, the Domain Medical Centre and the RAA. The Lessee will be required to attend regular facility and precinct meetings to contribute to positive relationships and coordinated planning both within the building and the surrounding precinct and to ensure that programming and business needs are compatible.

##### **Healthy Cities and OPAL**

The City of Marion is registered as a World Health Organisation Healthy City. A Healthy City is "one that is continually creating and improving those physical and social environments and expanding those community

resources which enable people to mutually support each other in performing all the functions of life and in developing to their maximum potential." This initiative includes a commitment to healthy eating options across City of Marion facilities and events.

Another health initiative in the City of Marion is OPAL - Obesity Prevention and Lifestyle, a joint initiative of local councils and the State Government of South Australia. OPAL works with a range of communities to positively change attitudes and behaviours about healthy eating and physical activity.

To contribute to both Healthy Cities and OPAL initiatives the Lessee will be encouraged to consider a range of healthy menu options and menu sizing for customers at Signatures Café.

## **2. KEY OUTCOMES**

It is envisaged in delivery of the key objectives the following key outcomes will be achieved:

1. Maximising broad community use and acceptance of Signatures Café;
2. Maximising the customer satisfaction of Signatures Café;
3. Maximising the operations and efficiency of Signatures Café, and;
4. Maximising the financial performance of Signatures Café.



**CONSENTS OF MORTGAGEES AND SECTION 32 DEVELOPMENT ACT 1993 CERTIFICATION**

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

DATED.....

**IMPORTANT NOTICE  
EXCLUSION OF WARRANTY OF FITNESS FOR PURPOSE**

Retail & Commercial Leases Act 1995: Section 18  
Retail & Commercial Leases Regulations 1995: Regulation 7

THE LESSOR DOES NOT WARRANT THAT THE PREMISES THAT YOU ARE ABOUT TO LEASE WILL, FOR THE DURATION OF YOUR LEASE, BE STRUCTURALLY SUITABLE FOR THE TYPE OF BUSINESS THAT YOU INTEND TO CARRY ON.

**EXECUTION**

###

**THE COMMON SEAL of THE CORPORATION** )  
**OF THE CITY OF MARION** was affixed in )  
accordance with a resolution of the Council in the )  
presence of: )  
)

.....  
Mayor

.....  
Chief Executive Officer

\* NB: A penalty of up to \$2000 or 6 months imprisonment applies for improper witnessing.

LANDS TITLES REGISTRATION  
OFFICE  
SOUTH AUSTRALIA

**MEMORANDUM OF LEASE**

FORM APPROVED BY THE REGISTRAR-GENERAL

**BELOW THIS LINE FOR OFFICE &  
STAMP DUTY PURPOSES ONLY**

Prefix
<b>L</b>
Series No.

**BELOW THIS LINE FOR AGENT USE ONLY**

CERTIFIED CORRECT FOR THE PURPOSES  
OF THE REAL PROPERTY ACT 1886

\_\_\_\_\_  
Solicitor/Registered Conveyancer/Lessee

AGENT CODE

Lodged by: WALLMANS LAWYERS  
Level 5 400 King William Street  
ADELAIDE SA 5000

Correction to: WALLMANS LAWYERS WALL

TITLES, CROWN LEASES, DECLARATIONS ETC. LODGED WITH  
INSTRUMENT (TO BE FILLED IN BY PERSON LODGING)

1. ....
2. ....
3. ....
4. ....

PLEASE ISSUE NEW CERTIFICATE(S) OF TITLE AS FOLLOWS

1. ....
2. ....
3. ....
4. ....

**DELIVERY INSTRUCTIONS** (Agent to complete)  
PLEASE DELIVER THE FOLLOWING ITEM(S) TO THE  
UNDERMENTIONED AGENT(S)

ITEM(S)	AGENT CODE

CORRECTION	PASSED
REGISTERED	
REGISTRAR-GENERAL	