



DISTRICT COUNCIL OF LOXTON WAIKERIE

(Council)

AND

LOXTON FOOTBALL AND SPORTING CLUB INC

(Lessee)

**PORTION OF LAND
GROUND LEASE**

PORTION OF LAND AT THE LOXTON SPORTING COMPLEX

SCHEDULE 1

ITEM 1 Leased Land	The portion of the land comprised in Certificate of Title Volume 6288 Folio 955 being the area delineated in the Plan attached as Annexure A
ITEM 2 Land	The whole of the land comprised in Certificate of Title Volume 6288 Folio 955
ITEM 3 Initial Term	TWENTY ONE years commencing on 1 December 2024 (Commencement Date) and expiring at midnight on 30 November 2045
ITEM 4 Renewal(s)	TWENTY ONE years commencing on 1 December 2045 and expiring at midnight on 30 November 2066
ITEM 5 Rent	\$1 per annum (exclusive of GST) (subject to review pursuant to clause 6)
ITEM 6 Rent Review Dates and Review Method	NIL
ITEM 7 Outgoings	Outgoings means the total of all amounts paid or payable by the Council in connection with the ownership, management, administration and operation of the Land and/or Building.
ITEM 8 Permitted Use	The viewing pavilion, erected by the sporting clubs, may be utilised for the sale of food and beverages, as well as for fundraising activities in support of the Loxton Football, Netball, Basketball and Cricket Clubs and other sporting and not for profit organisation's initiatives and programs.
ITEM 9 Public Risk Insurance	Twenty Million Dollars (\$20,000,000.00)
ITEM 10 Refurbishment	At the expiration or earlier termination of this Lease
ITEM 11 Special Conditions	The terms and conditions (if any) set out in Annexure B are deemed to be incorporated into this Lease and, in the event of any inconsistency with the terms and conditions contained in the body of this Lease, then the Special Conditions will prevail.

THIS LEASE is dated

2024

BETWEEN

DISTRICT COUNCIL OF LOXTON WAIKERIE ABN 42 047 987 821 of PO Box 409, Loxton SA 5333 (**Council**)

AND

LOXTON FOOTBALL AND SPORTING CLUB INCORPORATED of Bookpurnong Terrace, Loxton SA 5333 (**Lessee**)

INTRODUCTION

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

TERMS

1. ACKNOWLEDGEMENT OF INTRODUCTION

The preceding statements are accurate and form part of this Lease.

2. DICTIONARY

In this Lease:

Agreed Consideration means the Rent, Outgoings and all other consideration (whether in money or otherwise) to be paid or provided by the Lessee for any supply or use of the Leased Land and any goods, services or other things provided by the Council under this Lease (other than tax payable under clause 19).

Appropriate Standard means a standard commensurate with the standard of repair the relevant property was in and the quality of the property at the Commencement Date.

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

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

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

Commencement Date means the commencement date of the Initial Term described in Item 3.

Common Areas means all areas of the Land which are not leased or tenanted and which are for common use by tenants and lessees and their invitees and customers including driveways, car parks, walkways, washrooms and toilets.

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

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

Current CPI means for a CPI Review Date, the CPI number for the quarter ending immediately before that Review Date.

Default Rate means the rate which is 2% per annum greater than the published annual rate of interest charged from time to time by Westpac Banking Corporation on overdraft facilities of more than \$100,000 and if there is more than one rate published, the highest of those rates.

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

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

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

Emergency means a serious, unexpected or dangerous situation as determined by the Council at its discretion.

Improvements means the interior and exterior of all improvements which are to be made or have been made to the Leased Land by the Lessee and all other conveniences, services, amenities and appurtenances of in or to the Improvements.

Initial Term means the initial term of this Lease commencing on the Commencement Date described in Item 3.

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

Land means the land described in Item 2 and includes any part of the Land.

Leased Land means the land described in Item 1 including the Council's Equipment.

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

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

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

Lessee's Share means the proportion the area of the Leased Land bears from time to time to the total lettable area of the Land as measured in accordance with the method of measurement recommended for such Leased Land by the guidelines issued by the Institute current as at the Commencement Date or such other Institute method of measurement as the Council notifies the Lessee.

Outgoings means the outgoings described in Item 7.

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

Permitted Use means the use described in Item 8.

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

Rates and Taxes means all present and future rates, charges, levies, assessments, duty and charges of any Statutory Authority, other department or authority having the power to raise or levy any such amounts in respect of the use, ownership or occupation of the Leased Land and includes water and sewer charges, council rates, emergency services levy and land tax (on a single holding basis).

Renewal Term means the term (if any) of renewal or extension in Item 4.

Rent means the amount described in Item 5.

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

Special Conditions means the special conditions to this Lease described in Item 11.

Statutory Authorities means any authorities created by or under any relevant Legislation including the Council in its separate capacity as such an Authority.

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

Term means the Initial Term, the Renewal Term and any period during which the Lessee holds over or remains in occupation of the Leased Land.

The Precinct Loxton means the entire, Council owned building located at the Loxton Sporting Complex and includes The Mezzanine and kiosk.

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

3. INTERPRETATION

In this Lease, unless the contrary intention appears:

3.1 a reference to this Lease is a reference to this document;

- 3.2 words beginning with capital letters are defined in clause 2;
- 3.3 a reference to a clause is a reference to a clause in this Lease;
- 3.4 a reference to an Item is a reference to an item in the First Schedule;
- 3.5 a reference to a Schedule is a reference to a schedule of this Lease;
- 3.6 a reference to an Annexure is a reference to an annexure to this Lease;
- 3.7 headings are for convenience only and do not affect interpretation;
- 3.8 the singular includes the plural and vice-versa;
- 3.9 a reference to an individual or person includes a corporation, partnership, joint venture, authority, trust, state or government and vice versa;
- 3.10 a reference to any party in this Lease, or any other document or arrangement referred to in this Lease, includes that party's executors, administrators, substitutes, successors and assigns;
- 3.11 a reference to any document (including this Lease) is to that document as varied, novated, ratified or replaced from time to time;
- 3.12 a reference to any Legislation includes any statutory modification or re-enactment of it or any Legislation substituted for it, and all by-laws, regulations and rules issued under it;
- 3.13 a reference in this Lease to the Council's approval or consent, is to the Council's prior written approval or consent which may be granted or withheld in the absolute discretion of the Council;
- 3.14 'including' and similar expressions are not and must not be treated as words of limitation;
- 3.15 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 impliedly excluded or modified; and
- 3.16 any special condition in the Second Schedule will apply to this Lease and in the event of any inconsistency with the terms and conditions in the body of this Lease, then those special conditions will prevail.

4. GRANT OF GROUND LEASE

- 4.1 The Council grants and the Lessee accepts a lease of the Leased Land (excluding the Improvements which the parties acknowledge and agree are owned by the Lessee) for the Term on the terms and conditions as set out in this Lease.
- 4.2 The parties acknowledge that the Lessee has constructed and installed the Improvements or caused the Improvements to be constructed and installed to make the Leased Land suitable for the Permitted Use.

- 4.3 The parties acknowledge and agree that the Lessee is the owner of the Improvements and full legal and beneficial title to the Improvements has been and is for the duration of the Term vested in the Lessee notwithstanding:
- 4.3.1 the degree or purpose of affixation of the Improvements or any part of the Improvements;
 - 4.3.2 whether or not the Improvements or any part of the Improvements is a fixture or has or will become a fixture;
 - 4.3.3 any law to the contrary (which is excluded to the extent permitted at law); or
 - 4.3.4 any right granted to the Council or any obligation imposed upon the Lessee whether under this Lease or any other document including any right or obligation relating to the use, occupation, maintenance, repair, subsistence, assignment, subleasing, charging or control of the Improvements.
- 4.4 Clause 4.3 does not affect the Council's right under clause 16.2 to require the Lessee to remove any Improvements.

5. RENT

5.1 Payment of Rent

The Lessee must pay the Rent by annual instalments in advance on the anniversary of the Commencement Date.

5.2 Instalment

If a rent instalment period is less than 1 month, the instalment for that period is calculated at a daily rate based on the number of days in the month in which that period begins and the monthly instalment which would have been payable for a full month.

6. RATES, TAXES AND OUTGOINGS

6.1 Liability for Rates and Taxes

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

6.2 Payment of Outgoings

- 6.2.1 The Lessee must pay or reimburse the Council all Outgoings levied, assessed or charged in respect of the Leased Land.
- 6.2.2 The Outgoings shall be adjusted between the Council and the Lessee as at the Commencement Date and the end or termination date of this Lease.

6.3 Lessee's Proportion

If any of the Rates and Taxes or Outgoings are not separately assessed or charged in respect of the Leased Land, then the Lessee must pay the Lessee's Share of any such Rates and Taxes or Outgoings assessed or charged in respect of the Leased Land.

6.4 Power and Other Utilities

6.4.1 The Lessee will pay when they are due for payment, all costs for the use of telephone, lights and other utilities and the consumption of electricity, gas, water and any and all other services and utilities supplied to or used from the Leased Land.

6.4.2 If there is no separate meter for recording or measuring the services and utilities consumed on or from the Leased Land, then the Lessee may, if required by the Council, install the necessary meters at its own cost.

6.4.3 Without limiting the generality of this clause 7.4, the Lessee will comply in all respects with the *Electricity (General) Regulations 1997* and any other applicable electricity laws.

7. USE OF LEASED LAND

7.1 Permitted Use

The Lessee must use the Leased Land only for the Permitted Use and must not use or allow the Leased Land to be used for:

7.1.1 residential purposes; or

7.1.2 any other use,

(without the Council's prior written consent).

7.2 Alterations by Lessee

7.2.1 The Lessee must not carry out any alterations or additions to the Leased Land including, for the avoidance of doubt, the Improvements without Council's prior written consent.

7.2.2 The Lessee must provide full details of the proposed alteration and additions to the Council.

7.2.3 The Council may impose any conditions it considers necessary if it gives its approval, including requiring the Lessee to obtain the Council's prior written consent to any agreements that the Lessee enters into in relation to the alterations or additions.

7.2.4 The Lessee must carry out any approved alterations and additions:

(a) in a proper and workmanlike manner;

- (b) in accordance with the conditions imposed by the Council and with the approvals made by Council in its capacity as Lessor under this Lease;
- (c) in accordance with all Statutory Requirements; and
- (d) in a way to minimise disturbance to others.

7.2.5 Unless otherwise agreed in writing between the parties, the full legal and beneficial title to all alterations and additions to the Land or the Leased Land made pursuant to this clause are vested in the Lessee for the duration of the Term.

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

7.3 Offensive Activities

Excluding the activities permitted within the definition of Permitted Use, the Lessee must not carry on any offensive or dangerous activities on or from the Leased Land or create a nuisance or disturbance either:

- 7.3.1 for the Council; or
- 7.3.2 for the owners or occupiers of any adjoining property; and
- 7.3.3 must ensure at all times that activities conducted on or from the Leased Land will not bring any discredit upon the Council.

7.4 Use of Facilities

- 7.4.1 The Lessee will ensure that the Services are used carefully and responsibly and in accordance with any directions that may be given by the Council from time to time.
- 7.4.2 The Lessee will be responsible to repair or correct any damage or malfunction which results from any misuse or abuse of the Services by the Lessee.

7.5 Statutory Requirements

The Lessee, at its own cost, must comply with all Statutory Requirements (including any obligations under the *Work Health and Safety Act 2012 (SA)*) and reasonable directives of the Council relating to:

- 7.5.1 the Lessee's use and occupation of the Leased Land; and
- 7.5.2 the nature of the Permitted Use conducted on the Leased Land by the Lessee;

including any requirements for building works or modifications to the Leased Land (whether structural or otherwise).

7.6 Alcohol and Gaming

- 7.6.1 The Council consents to the Lessee applying for a liquor licence under the *Liquor Licensing Act 1997*.
- 7.6.2 If the Lessee obtains a licence under this clause, the Lessee must not do (or fail to do) or allow any of its employees, agents contractors, licensees or invitees to (or fail to):
- (a) do anything that is in breach of the *Liquor Licensing Act 1997* or of the conditions of the licence;
 - (b) do anything that may result in the licence being revoked or suspended;
 - (c) assign the licence;
 - (d) apply to remove the licence;
 - (e) allow a licence to be granted to another person in respect of the Premises or any part of the Premises; or
 - (f) apply to vary or revoke any conditions of the licence.
- 7.6.3 At or before the expiry or early termination of this Lease, the Lessee must:
- (a) give any notices the Council requires to renew or assign the licence;
 - (b) allow those notices to be affixed as and for the period required by the *Liquor Licensing Act 1997*;
 - (c) assign the licence to the Council or the Council's nominees if required to do so by the Council; and
 - (d) do anything else that may be required to affect the renewal or assignment of the licence.

7.7 Signs

The Lessee must not place any signs or advertisements on the outside or inside (if they can be seen from outside) of the Leased Land, except a sign or signs which are approved by the Council and comply with any relevant Statutory Requirements.

7.8 Dangerous Equipment and Installations

The Lessee may only install or use within the Leased Land equipment and facilities which are reasonably necessary for and normally used in connection with the Permitted Use and will not install or bring onto the Leased Land (unless required for the Permitted Use):

- 7.8.1 any electrical, gas powered or other machinery or equipment that may pose a danger, risk or hazard;

- 7.8.2 any chemicals or other dangerous substances that may pose a danger, risk or hazard; or
- 7.8.3 any heavy equipment or items that may damage the Leased Land or Building.

7.9 Fire Precautions

The Lessee must, at its own cost:

- 7.9.1 comply with all requirements and directives of the Council with regard to fire safety systems and procedures including fire evacuation drills and other procedures; and
- 7.9.2 comply with all Statutory Requirements relating to fire safety and procedures including any structural works or modifications or other building works which are required as a consequence of the Lessee's particular use of the Leased Land; and
- 7.9.3 without limiting clauses 8.9.1 and 8.9.2 the Lessee will undertake maintenance of the fire safety equipment.

7.10 Notice of Defect

The Lessee must:

- 7.10.1 give the Council prompt notice of any circumstance or event which the Lessee should reasonably be aware might cause danger, risk or hazard to the Leased Land or to any person on the Leased Land; and
- 7.10.2 if required by the Council, promptly rectify any defect or want of repair to make the Leased Land safe from any danger, risk or hazard.

7.11 Common area access

Subject to the Terms of this Lease, the Lessee is entitled to the use and enjoyment of the Common Areas.

7.12 No Warranty

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

8. INSURANCE

8.1 Lessee must Insure

The Lessee must keep current during the Term (in connection with the Leased Land), the Lessee's Equipment and the Improvements:

- 8.1.1 public risk insurance for at least the amount in Item 9 (or any other amount the Council reasonably requires) for each claim;

- 8.1.2 all insurance in respect of the Lessee's Equipment and the Improvements for its full replacement value;
- 8.1.3 plate glass insurance if required by Council against usual risks; and
- 8.1.4 other insurances required by any Statutory Requirement or which the Council reasonably requires.

8.2 Requirements for Policies

Each policy the Lessee takes out under this clause 9 must:

- 8.2.1 be with an insurer and on terms reasonably approved by the Council;
- 8.2.2 be in the name of the Lessee and note the interest of the Council and any other person the Council requires;
- 8.2.3 cover events occurring during the policy's currency regardless of when claims are made; and
- 8.2.4 note that despite any similar policies of the Council, the Lessee's policies will be primary policies.

8.3 Evidence of Insurance

The Lessee must give the Council certificates evidencing the currency of the policies the Lessee has taken out under this clause 9. During the Term the Lessee must:

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

8.4 Insurance Affected

- 8.4.1 The Lessee must not do anything that may:
 - (a) prejudice any insurance of the Leased Land; or
 - (b) increase the premium for that insurance.
- 8.4.2 If the Lessee does anything (with or without the Council's consent) that increases the premium of any insurance the Council has in connection with the Leased Land, the Lessee must on demand pay the amount of that increase to the Council.

9. REPAIR AND MAINTENANCE

9.1 Repair, Maintain and Replace

9.1.1 The Lessee must at its own cost:

- (a) maintain, repair and replace any part of the Council's Equipment and the Lessee's Equipment so that the Council's Equipment and the Lessee's Equipment are kept to the Appropriate Standard; and
- (b) maintain and repair any damage to the Leased Land and the Improvements so that the Leased Land and the Improvements are kept to the Appropriate Standard.

9.1.2 If the Council requires the Lessee to do so, the Lessee must at its own cost promptly repair any damage caused or contributed to by the act, omission, negligence or default of the Lessee.

9.1.3 The Lessee acknowledges that it is vested with the title to the Improvements and agrees that in addition to and without limiting the Lessee's obligations under clause 9.1.1, the Lessee must carry out or cause to be carried out:

- (a) any repair or replacement of any part or the whole of the Improvements or the interior or exterior of the Improvements; and
- (b) any structural or major component part repair or replacement or any capital expenditure,

9.1.4 which is necessary for the Lessee to comply with clause 9.1.1.

9.2 Cleaning

The Lessee must:

- 9.2.1 keep the Leased Land and the Improvements clean and tidy;
- 9.2.2 keep the Leased Land and the Improvements free of vermin, insects and other pests; and
- 9.2.3 not cause the Common Areas to be left untidy or in an unclean state or condition.

10. TRANSFERRING, SUBLETTING AND CHARGING

10.1 Transfer

The Lessee may only transfer its interest in this Lease provided:

- 10.1.1 the proposed transferee does not change the Permitted Use;
- 10.1.2 the proposed transferee is able to meet the financial obligations under this Lease;

10.1.3 the Lessee has complied with the Council's procedural requirements for obtaining the Council's consent and the Lessee has obtained the written consent of Council which may be withheld at Council's absolute discretion; and

10.1.4 the Lessee assigns the Lessee's title to the Improvements.

10.2 Subletting

The Lessee must not sublet or sublicense any part of the Premises without the written consent of the Council or on such terms and conditions as Council reasonably requires.

10.3 Charging

10.3.1 The Lessee must not charge the Lessee's interest in this Lease or the Lessee's Equipment without the written consent of the Council or on such terms and conditions as Council reasonably requires.

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

10.4 Hiring out of Premises

The Lessee must not hire out or otherwise part with possession of the Premises without the Council's consent or on such terms and conditions as Council reasonably requires.

10.5 Deemed Assignment

If the Lessee is a corporation (not being a company with its shares listed on any Stock Exchange in Australia) or an association, any change in the beneficial ownership of twenty per centum (20%) or more of the voting shares in the corporation or any change in the effective control of the corporation or association, will be deemed to be an assignment of the Leased Land requiring the consent of Council under this Lease.

10.6 Costs

The Lessee must pay all costs reasonably incurred by the Council (including the costs of any consultant or any legal fees) in relation to any dealing, including in considering whether or not to grant any consent to a request by the Lessee under this clause 11.

11. LESSEE GOVERNANCE

11.1 On or before the Commencement Date, if requested, the Lessee must provide to the Council a copy of its constitution and any other documents that regulate the governance and operations of the Lessee.

11.2 As and when the Council may reasonably require, the Lessee must provide to the Council such information in relation to the Lessee's use and occupation of the Leased Land as required by the Council including financial information of the Lessee.

12. COUNCIL'S OBLIGATIONS AND RIGHTS

12.1 Quiet Enjoyment

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

12.2 Right to Enter

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

- 12.2.1 to see the state of repair of the Leased Land;
- 12.2.2 to do repairs to the Leased Land or other works which cannot reasonably be done unless the Council enters the Leased Land;
- 12.2.3 to verify the Lessee's compliance with the terms of this Lease;
- 12.2.4 to do anything the Council must or may do under this Lease or must do under any Legislation or to satisfy the requirements of any Statutory Authority; and
- 12.2.5 to show prospective lessees through the Leased Land.

12.3 Emergencies

If required by Legislation or to satisfy the requirements of any Statutory Authority, in an emergency the Council may:

- 12.3.1 close the Leased Land; and
- 12.3.2 prevent the Lessee from entering the Leased Land.

12.4 Works and Restrictions

- 12.4.1 The Council may install, use, maintain, repair, alter, and interrupt Services;
- 12.4.2 The Council may close (temporarily or permanently) and restrict access to the Common Areas.
- 12.4.3 The Council must (except in cases of emergency) take reasonable steps to minimise interference with the Lessee's use and occupation of the Leased Land.

12.5 Right to Rectify

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

13. DAMAGE OR DESTRUCTION

13.1 Termination for Destruction or Damage

- 13.1.1 If the Improvements are destroyed or damaged so that the Leased Land is unfit for the Permitted use then the Council or the Lessee may terminate the Lease by giving the other not less than 1 month's notice.

14. REDEVELOPMENT, ASSET RATIONALISATION AND DEMOLITION

If as part of any redevelopment, asset rationalisation or other project conducted by the Council that includes the Land (**Redevelopment**) or for any other reason the Council wishes to demolish or acquire vacant possession of the Leased Land or any part of the Leased Land, then the Council will be entitled to terminate this Lease.

15. RENEWAL

- 15.1 If a right of renewal has been granted to the Lessee as described in Item 4 and the Lessee wishes to exercise that right of renewal, then the Lessee must serve a written notice on the Council not less than 6 months and not more than 12 months before the expiry of the Initial Term stating it requires a renewal of this Lease.

- 15.2 The Lessee will not be entitled to a right of renewal if:

- 15.2.1 the Lessee has been in breach of this Lease at any time before giving notice of the Lessee's exercise of the right of renewal;
- 15.2.2 the Lessee is in breach of this Lease at the time of giving that notice; or
- 15.2.3 the Lessee is in breach or commits a breach of this Lease after giving notice but before commencement of the Renewal Term.

16. RIGHTS AND OBLIGATIONS ON EXPIRY

16.1 Expiry

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

16.2 Handover of Possession

Before this Lease comes to an end, the Lessee will:

- 16.2.1 remove all of the Lessee's Equipment from the Leased Land and repair any damage caused by such removal;
- 16.2.2 no later than 1 month before this Lease comes to an end, provide the Council with a written summary of all alterations, additions and Improvements made to the Leased Land by the Lessee, whether those alterations and additions and Improvements were authorised by the Council or not;

16.2.3 if required by the Council, remove any alterations or additions or Improvements made to the Leased Land by the Lessee and reinstate the Leased Land to the Appropriate Standard; and

16.2.4 complete any repairs which the Lessee is obliged to carry out under this Lease.

16.3 Abandoned Goods

If when this Lease comes to an end the Lessee leaves any goods or equipment on the Leased Land, the Council will be entitled to deal with and dispose of those goods.

16.4 Holding Over

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

16.4.1 either party may terminate on 1 month's notice given at any time; and

16.4.2 is on the same terms as this Lease.

17. BREACH

17.1 Payment Obligations

17.1.1 The Lessee must make payments due under this Lease:

- (a) without demand (unless this Lease provides demand must be made);
- (b) without set off, counterclaim, withholding or deduction;
- (c) to the Council or as the Council directs; and
- (d) by direct debit or such means as directed by the Council.

17.1.2 If a payment is stated to be due on a particular Payment Date (such as the next Payment Date or the first Payment Date after an event) and there is no such Payment Date, the Lessee must make that payment on demand.

17.2 Council's Rights on Breach

17.2.1 If the Lessee is at any time in breach of any of its obligations under this Lease and the Lessee fails to remedy that breach to the satisfaction of the Council after being requested by the Council to do so, the Council and anybody authorised by the Council for that purpose may at any time thereafter come onto the Leased Land without notice and do all things necessary to remedy that breach.

17.2.2 The Lessee will be liable to pay or reimburse the Council for all costs and expenses incurred in that regard which the Council may recover from the Lessee as a debt due and payable on demand.

17.3 Default, Breach and Re-Entry

In the event that:

- 17.3.1 any moneys (or part of any moneys) payable under this Lease are unpaid for the space of seven (7) days after any day on which the same ought to have been paid (although no formal or legal demand has been made);
- 17.3.2 the Lessee commits, permits or suffers to occur any breach or default in the due and punctual observances and performance of any of the covenants, obligations and provisions of this Lease;
- 17.3.3 in the case of a Lessee being a company or association:
 - (a) a meeting of the directors or members of the Lessee is convened to pass a resolution that an administrator of the Lessee be appointed or that the Lessee be wound up voluntarily;
 - (b) any person appoints an administrator of the Lessee;
 - (c) an application is made to any court to wind up the Lessee;
 - (d) an application is made pursuant to section 411 of the *Corporations Act 2001*;
 - (e) a Controller, Managing Controller, Receiver or Receiver and Manager is appointed to the Lessee or in respect of any property of the Lessee; or
 - (f) the Lessee is deregistered or dissolved;
- 17.3.4 in the case of the Lessee being a natural person:
 - (a) the Lessee commits an act of bankruptcy or a sequestration order is made against the Lessee;
 - (b) a creditor of the Lessee presents a creditor's petition against the Lessee under the *Bankruptcy Act 1966*;
 - (c) the Lessee presents a petition against himself or herself under the *Bankruptcy Act 1966*;
 - (d) the Lessee signs an authority under section 188 of the *Bankruptcy Act 1966*;
 - (e) the Lessee gives a debt agreement proposal to the Official Trustee under Part IX of the *Bankruptcy Act 1966*, and that debt agreement proposal is accepted by the Lessee's creditors;
 - (f) the Lessee becomes subject to an order directing the Official Trustee or a specified registered Trustee to take control of his or her property before sequestration; or

- (g) the Lessee is convicted of an indictable offence (other than a traffic offence);
- 17.3.5 execution is levied against the Lessee and not discharged within 30 days;
- 17.3.6 any property in or on the Leased Land is seized or taken in execution under any judgment or proceedings;
- 17.3.7 the Leased Land is left unoccupied for 1 month or more without the Council's consent,

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

17.4 Rights of Council not Limited

The rights of the Council under this Lease and at law resulting from a breach of this Lease by the Lessee shall not be excluded or limited in any way by reason of the Council having or exercising any powers under this clause 18.

17.5 Landlord and Tenant Act

In the case of a breach or default of any term of this Lease where notice is required to be given pursuant to section 10 of the *Landlord and Tenant Act 1936*, such notices will provide that the period of 14 days is the period within which the Lessee is to remedy any such breach or default if it is capable of remedy or to make reasonable compensation in money to the satisfaction of the Council. No period of notices is required for the non-payment of Rent.

17.6 Repudiation and Damages

- 17.6.1 The Lessee acknowledges that the following obligations under this Lease are essential terms:
 - (a) the obligation to pay Rent;
 - (b) the obligations and prohibitions in relation to use of the Leased Land;
 - (c) the obligation to pay Outgoings;
 - (d) the obligations and restrictions in relation to the Improvements, additions and alterations to the Leased Land; and
 - (e) the restriction on assignment, subletting, mortgaging and licensing.
- 17.6.2 If the Council accepts payment of Rent or any other moneys late or does not act or exercise any rights immediately or at all in respect of

any breach of an essential term, that conduct on the part of the Council will not be deemed to amount to a waiver of the essential nature of that essential term.

- 17.6.3 If the Lessee breaches any essential term, that conduct on the part of the Lessee will be deemed to constitute a repudiation of this Lease and the Council may at any time thereafter rescind this Lease by accepting that repudiation.
- 17.6.4 The Lessee agrees that if this Lease is terminated by the Council because of a breach by the Lessee of an essential term, or if the Lessee repudiates this Lease and the Council accepts that repudiation thereby rescinding this Lease, the Lessee will be obliged to pay compensation to the Council including rent and other moneys which the Council would otherwise have received under this Lease for the balance of the Term had the Lessee not breached an essential term or repudiated this Lease. In those circumstances the Council will be obliged to take reasonable steps to mitigate its losses and to endeavour to lease the Leased Land at a reasonable rent and on reasonable terms.
- 17.6.5 The rights of the Council under this clause 18.6 and any action taken by the Council hereunder do not exclude or limit any other rights or entitlements which the Council has under this Lease or at law in respect of any breach or repudiatory conduct on the part of the Lessee.

18. INDEMNITY AND RELEASE

18.1 Risk

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

18.2 Indemnity

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

- 18.2.1 any act or omission of the Lessee;
- 18.2.2 the overflow or leakage of water or any other harmful agent into or from the Leased Land;
- 18.2.3 any fire on or from the Leased Land;
- 18.2.4 loss or damage to property or injury or death to any person caused by the Lessee, the use of the Leased Land by the Lessee or otherwise relating to the Leased Land;
- 18.2.5 a breach of this Lease by the Lessee; or
- 18.2.6 the Lessee's use or occupation of the Leased Land or the Common Areas.

18.3 Release

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

18.4 Indemnities are Independent

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

19. GOODS AND SERVICES TAX

19.1 If GST applies to impose tax on the Agreed Consideration or any part of it or if the Council is liable to pay GST in connection with this Lease or any goods, services or other things supplied under this Lease then:

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

19.1.2 the Council may increase the Agreed Consideration or the relevant part of the Agreed Consideration by a percentage amount which is equal to the GST Rate; and

19.1.3 the Lessee shall pay the increased Agreed Consideration on the due date for payment by the Lessee of the Agreed Consideration.

19.2 Where the Agreed Consideration is to be increased to account for GST under this clause 20, the Council shall, on or before the date on which the Agreed Consideration is payable, issue a tax invoice to the Lessee.

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

20. GENERAL

20.1 Costs

The Lessee must, on request, pay or reimburse to the Council:

20.1.1 Unless otherwise agreed between the parties all of the legal costs (determined on a solicitor and client basis) incurred by the Council in connection with the preparation of this Lease, negotiating, revising and engrossing this Lease (including all attendances on the Lessee and its legal and other advisers and all advices provided to the Council) and attending to the execution of this Lease;

20.1.2 all costs including legal and other expenses incurred by the Council in connection with the preparation, negotiation, revision, execution and registration of any extension of this Lease; and

20.1.3 all legal and other costs and expenses incurred by the Council in consequence of any actual or threatened breach by the Lessee

hereunder or in exercising or enforcing (or attempting to do so) any rights or remedies of the Council hereunder or at law or otherwise arising in consequence of any actual or threatened breach by the Lessee.

20.2 Waiver

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

20.3 Notice

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

- (a) in the case of the Lessee, if left at the Leased Land or if the Lessee has vacated the Leased Land, then if posted by pre-paid post to the last known address of the Lessee;
- (b) in the case of the Council, if posted by pre-paid post to the Council at its principal place of business in South Australia (which is taken to be the address stated in this Lease unless the Lessee is or ought reasonably be aware that that is not the Council's principal place of business at the relevant time).

20.3.2 Notice served by pre-paid post will be deemed to have been given or served 4 Business Days after posting.

20.4 Severance

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

20.5 Entire Agreement

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

20.6 Resumption

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

EXECUTED as an AGREEMENT**Executed by Council**

THE COMMON SEAL of the **DISTRICT COUNCIL OF LOXTON WAIKERIE** was affixed here in the presence of:

.....
Signature of Mayor

.....
Signature of Chief Executive Officer

.....
Full name of Mayor

.....
Full name of Chief Executive Office

OR

EXECUTED by the Authorised Delegate of the **DISTRICT COUNCIL OF LOXTON WAIKERIE** under delegation pursuant to section 44 of the Local Government Act 1999:

.....
Signature of Authorised Representative

.....
Signature of Witness

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

.....
Name of Witness (print)

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

Executed by the Lessee

In accordance with its constitution in the)
presence of:)
)
)
)

.....
Signature

.....
Signature

.....
Print full name and state position.

.....
Print full name and state position

ANNEXURE B

SPECIAL CONDITIONS

1. Council's Obligations

- 1.1 The Council will take out and maintain a policy of building insurance.
- 1.2 The Council shall take out and maintain insurance for Council's Equipment.
- 1.3 The Council shall be responsible for the maintenance of any carpark at the Leased Land.
- 1.4 The Council shall be responsible for stormwater management at the Leased Land.

2. Lessee's Obligations

- 2.1 The Lessee shall be responsible for and pay all costs relating to its use that relate to alcohol, environmental health and food safety compliance and applications.
- 2.2 The Lessee shall choose, supply and grade usage of water source and be responsible for charges
- 2.3 The Lessee shall be responsible for all repair and maintenance of external lights.
- 2.4 The Lessee shall be responsible for globe replacement of all external lights.
- 2.5 The Lessee shall be responsible for the removal of any graffiti at the Premises and the Council may provide assistance upon request as per the Policy.
- 2.6 The Lessee is responsible for the internal and external painting of the Premises.
- 2.7 The Lessee shall be responsible for plumbing issues relating to the sinks, drains, pipes, water filters, etc.
- 2.8 The Lessee shall be responsible for the maintenance and replacement of all glass at the Premises.
- 2.9 The Lessee shall be responsible for the cost of all handyman maintenance including handles, floor coverings, locks, doors, roller doors, cobwebs, internal light globes, window cleaning, etc., however the Lessee may request in the first instance for Council to carry out the work and secondly by an external contractor (request is in respect of ceiling height).
- 2.10 The Lessee shall be responsible for all waste removal from the Premises outside normal Council weekly bin collections (if applicable).
- 2.11 The Lessee shall be responsible for repair, maintenance and replacement of all electronic and electrical equipment and will ensure that all such equipment is operated in a safe manner and in accordance with all applicable instructions, laws and guidelines.

- 2.12 The Lessee in accordance with clause 10.4 will have the right to hire out the premises for private functions or events for specified hours on specified dates (short term hire) with prior approval from the authorised delegate of Council and within the conditions specified in Annexure B item 2.13.
- 2.13 The Lessee will cease sales and consumption of all food, alcohol and other beverages at 4:30 pm on every Saturday game day during the winter sport season. During the summer sport season, the sales of food, alcohol and other beverages are permitted only when the mezzanine at The Precinct Loxton is closed unless otherwise approved by the authorised delegate of Council. Other hours of sale are not permitted unless approval has been granted by the authorised delegate of Council prior to the event. The intent of this condition is to allow sporting clubs to serve food and alcohol during sporting events and support the mezzanine at The Precinct Loxton.
- 2.14 The Lessee agrees to work with The Precinct Loxton management to ensure an even competition exists in relation to the prices of food and beverage on offer and sold by the club and by The Precinct Loxton.
- 2.15 The Lessee understands that an event permit is required for any additional events held by the sporting clubs outside of the leased area, that are not within the regular schedule of games.
- 2.16 The Lessee agrees that the storage areas within the lease area are to be utilised exclusively for storage.