2. QEPT WellPlayed Report and Documentation Report No. AR19/10346

COMMITTEE	Council
MEETING DATE:	7 March 2019
REPORT NO.	AR19/10346
RM8 REFERENCE	AF11/1407
SUMMARY	This report tables documents the 'WellPlayed Report' and associated correspondence provided by the Queen Elizabeth Park Trust in relation to golf course operations.
COMMUNITY PLAN REFERENCE	Goal 1: Our People
	Goal 2: Our Location
	Goal 3: Our Diverse Economy
	Goal 4: Our Climate, Natural Resources, Arts, Culture and Heritage

REPORT RECOMMENDATION
(a) That Council Report No. AR19/10346 titled '*QEPT WellPlayed Report and Documentation*' as presented to the Council on 7 March 2019 be noted.

Moved: Seconded:

Discussion

The following attachments are tabled in accordance with the notice calling for a Special Council meeting to be held at 6pm on 7 March 2019 for the purpose of considering matters pertaining to the Queen Elizabeth Park Trust

Attachments

Attachment 1 (AR19/10262): QEPT Letter to City of Mount Gambier 28/2/2019
Attachment 2 (AR19/10263): QEPT WellPlayed Report
Attachment 3 (AR19/10264): QEPT Support Letter – Golf Australia (SA)
Attachment 4 (AR19/10265): QEPT Minutes 27 February 2019)
Attachment 5 (AR19/10266): QEPT Action Sheet 27 February 2019

3. Documents relating to the Management of the Crater Lakes Area QEPT Report No. AR19/10304

COMMITTEE	Council
MEETING DATE:	7 March 2019
REPORT NO.	AR19/10304
RM8 REFERENCE	AF11/1407
SUMMARY	This report tables documents relating to the management of the Crater Lakes Area under lease to the Queen Elizabeth Park Trust.
COMMUNITY PLAN REFERENCE	Goal 1: Our People
	Goal 2: Our Location
	Goal 3: Our Diverse Economy
	Goal 4: Our Climate, Natural Resources, Arts, Culture and Heritage

REPORT RECOMMENDATION
(a) That Council Report No. AR19/10304 titled '*Documents relating to the Management of the Crater Lakes Area*' as presented to the Council on 7 March 2019 be noted.

Moved: Seconded:

Discussion

The following attachments are tabled in accordance with the notice calling for a Special Council meeting to be held at 6pm on 7 March 2019 for the purpose of considering matters pertaining to the Queen Elizabeth Park Trust

Attachments

Attachment 1 (AR18/51051):	*Confidential Letter to CEO from QEPT*
Attachment 2 (AR18/51054):	*Confidential Attachment – Financial Discussion Paper*
Attachment 3 (AR14/24185):	*CCS Report No. 48/2014 Leasing Queen Elizabeth Park Trust (Caravan Park)*
Attachment 4 (AR14/29641):	*CCS Report No. 55/2014 Leasing Queen Elizabeth Park Trust (Caravan Park)*
Attachment 5 (AR17/41635):	*Strategic Standing Committee Report No. AR17/41635 – Leasing Blue Lake Golf Course*
Attachment 6 (AR17/45107):	*Attachment 1 to Report No. AR17/41635 (Golf Course Lease and Licence Plan)*
Attachment 7 (AR14/41651):	*Head Lease Caravan Park 01/11/2014 to 31/10/2035*
Attachment 8 (AR15/37223):	*Underlease Caravan Park 01/11/2014 to 30/10/2020 (with 3x 5year rights of renewal)*
Attachment 9 (AR13/13833):	*Golf Course (Head) Lease (First Portion) 01/07/1999 to 30/06/2009*
Attachment 10 (AR13/4860):	*Golf Course (Head) Lease (First Portion) Extension and Variation 01/07/2009 to 30/06/2019*
Attachment 11 (AR13/4955):	*Golf Course (Head) Lease (Second Portion) 30/06/1995 to 29/06/2019*
Attachment 12 (AR11/2086[v2]):	*Community Land Management Plan – Crater Lakes*

4. Consideration of Media Statement and Appointing a Council Member as a Spokesperson on Matters Relating to the QEPT - Report No. AR19/10534

COMMITTEE	Council
MEETING DATE:	7 March 2019
REPORT NO.	AR19/10534
RM8 REFERENCE	AF11/1407
SUMMARY	This report provides background information on Member authority to make media statements for and on behalf of Council, with regard to matters relating the QEPT.
COMMUNITY PLAN REFERENCE	Goal 3: Our Diverse Economy

REPORT RECOMMENDATION	
(a)	That Council Report No. AR19/10534 titled '*Consideration of Media Statement and appointing a Council Member as a spokesperson on matters relating to the QEPT*' as presented to the Council on 7 March 2019 be noted.
(b)	To be determined at the meeting.

Moved: Seconded:

Background

The agenda provided with the notice of Special Meeting of Council for 7 March 2019 included an item titled 'Consideration of media statement and appointing a Council Member as a spokesperson on matters relating to the Queen Elizabeth Park Trust.

Council has an existing Policy M130 Media – Statements on Behalf of Council that specifies the Members and employees authorized to make statements to the media.

Discussion

Council Policy M130 Media – Statements on Behalf of Council provides as follows:

> *Statements to the media for and on behalf of Council, are only to be made by the Mayor or Chief Executive Officer, or another Member or employee authorised by the Mayor or Chief Executive Officer to make any statement.*

Accordingly, the Mayor may authorise another Council Member to make a statement for and on behalf of Council in relation to any matter, however this policy provision does not prevent Council itself from making such an appointment.

Should Council determine to formally appoint a Council Member as spokesperson in this instance, it may also consider an acknowledgement of the ordinary policy position and reason for the variance.

In the absence of a resolution of Council appointing another Member, and noting Conflict of Interest declared by the Mayor in Queen Elizabeth Park Trust matters, it would be anticipated that the Mayor would authorise the Deputy Mayor to make any statement, noting that the Deputy Mayor may act in the office of Mayor in the absence of the Mayor.

It remains for Council to determine a position on the matters relating to the golf course lease.

Attachments

Nil

Michael McCARTHY
MANAGER EXECUTIVE ADMINISTRATION

6 March 2019
MMcC

CORPORATE AND COMMUNITY SERVICES REPORT NO 48/2014

SUBJECT: LEASING – QUEEN ELIZABETH PARK TRUST

REF: AF11/1407

Goal:	*Governance*
Strategic Objective:	*Demonstrate innovative and responsive organisational governance.*
	Evaluate the effectiveness of all service delivery initiatives against the returns and/or benefits to the community.
Goal:	*Building Communities*
Strategic Objective:	*Recognise and support our volunteers, community organisations and their sustainability as they continue to be the foundation of the community.*
Goal:	*Securing Economic Prosperity*
Strategic Objective:	*Support the development of our local economy, our unique local experiences and our capacity to grow visitation to our City.*

The Queen Elizabeth Park Trust ("QEPT") currently leases from Council properties comprising the Blue Lake Holiday (Caravan) Park and the adjacent Golf Links that it manages and operates under sub-lease arrangements. This continues similar arrangements that have been in place since 1964, with the QEPT having recently celebrated 50 years of successful operation.

The QEPT has approached Council seeking longer tenure on the caravan park in order to provide certainty and continuity for it's longer term business and infrastructure planning.

This report proposes that a new lease be granted to the QEPT for a term of 21 years, subject to public consultation on the lease proposal in accordance with Section 202 of the Local Government Act 1999.

The grant of a long term lease is consistent with the objectives of the community land management plan applicable to the caravan park that specifically includes to:

- *Provide for privately operated infrastructure including caravan park, golf links and associated facilities under long term leases and sub-leases for business purposes.*

In determining whether to grant the QEPT's request, Council should note that it is under no obligation to offer the lease to the open market, but that it would be appropriate to consider the rationale for offering a lease to the sitting tenant, that includes:

- The QEPT and Council sharing similar objectives (including to: *'promote tourism and development of open space in Mount Gambier')*
- The QEPT's incorporated structure providing longevity as a lessee.
- The QEPT not being profit driven, with any returns able to be re-invested into the local community rather than to business owners/shareholders.
- The QEPT Board being appointed (and thus influenced) by the Mount Gambier Chamber of Commerce and Council
- Other 'community leased' premises are re-offered to sitting tenants whose use is also consistent with Council objectives (e.g. provision of sporting/community facilities)

On balance, it would appear that the continuation of an open and transparent lease arrangement with the QEPT would be consistent with the principles to be observed by a council as specified at Section 8 of the Local Government Act 1999, and would not be in contravention of Section 49 of the Act in relation to contracting and tendering.

RECOMMENDATION

(a) Corporate and Community Services Report No. 48/2014 be received;

(b) The Chief Executive Officer be authorised to commence public consultation on the proposed lease of the Blue Lake Holiday (Caravan) Park (Lot 101 in CT5961/294) to the Queen Elizabeth Park Trust on 'community terms' for a period not exceeding 21 years.

(c) A further report be presented for Council to consider any submissions received on the proposed lease of the Blue Lake Holiday (Caravan) Park to the Queen Elizabeth Park Trust, and whether to grant a lease.

(d) In the event that no submissions are received (or no submissions are received objecting to the proposal), the Chief Executive Officer and Mayor be authorised to negotiate, have prepared, and to sign and seal any documents necessary to give effect to a lease of the Blue Lake Holiday (Caravan) Park (Lot 101 in CT5961/294) to the Queen Elizabeth Park Trust.

Michael McCARTHY
GOVERANCE OFFICER

Sighted:

Mark McSHANE
CHIEF EXECUTIVE OFFICER

1st July, 2014 MMcC/TLG

CORPORATE AND COMMUNITY SERVICES REPORT NO. 55/2014

SUBJECT: LEASING – QUEEN ELIZABETH PARK TRUST

REF: AF11/1407

Goal: *Governance*
Strategic Objective: *Demonstrate innovative and responsive organisational governance.*

Evaluate the effectiveness of all service delivery initiatives against the returns and/or benefits to the community.

Goal: *Building Communities*
Strategic Objective: *Recognise and support our volunteers, community organisations and their sustainability as they continue to be the foundation of the community.*

Goal: *Securing Economic Prosperity*
Strategic Objective: *Support the development of our local economy, our unique local experiences and our capacity to grow visitation to our City.*

At its last meeting held on 15th July 2014 Council resolved:

(a) Corporate and Community Services Report No. 48/2014 be received;

(b) The Chief Executive Officer be authorised to commence public consultation on the proposed lease of the Blue Lake Holiday (Caravan) Park (Lot 101 in CT5961/294) to the Queen Elizabeth Park Trust on 'community terms' for a period not exceeding 21 years.

(c) A further report be presented for Council to consider any submissions received on the proposed lease of the Blue Lake Holiday (Caravan) Park to the Queen Elizabeth Park Trust, and whether to grant a lease.

(d) In the event that no submissions are received (or no submissions are received objecting to the proposal), the Chief Executive Officer and Mayor be authorised to negotiate, have prepared, and to sign and seal any documents necessary to give effect to a lease of the Blue Lake Holiday (Caravan) Park (Lot 101 in CT5961/294) to the Queen Elizabeth Park Trust.

In accordance with resolution (b) public consultation was conducted on the proposal to lease the Blue Lake Holiday (Caravan) Park (Lot 101 in CT5961/294) to the Queen Elizabeth Park Trust on 'community terms' for a period not exceeding 21 years, commencing with a Public Notice in The Border Watch on 18th July and copies of the report relating to the proposal being on public display in the foyer of the Council Offices and accessible from both the homepage banner and community news sections of Council's website.

Articles in Council's Weekly Affairs columns in the Border Watch on 23rd July and 6th August directed readers to the Council Website or Council's Governance Officer for further information, and the Public Notice was repeated in the 25th July edition of the Border Watch.

Interested persons were invited to submit written submissions on the proposal by 5:00pm on Friday 8th August 2014.

At the close of submissions, written submissions were received from:

- John Kirby
- Douglas Mullen
- Queen Elizabeth Park Trust

The submissions received are provided for Elected Members (refer Attachments 1-3)

Consideration of Submissions

The submission received from the Queen Elizabeth Park Trust supports the lease proposal.

The submissions received from John Kirby and Douglas Mullen provided no specific objection to the leasing of the Blue Lake Holiday (Caravan) Park property, but raised concerns with the non-provision of the Queen Elizabeth Park Trusts financial accounts, the Queen Elizabeth Park Trusts compliance with the Objects its own Constitution/Rules and questions with the (financial) operating activities of the Queen Elizabeth Park Trust.

The submission from Douglas Mullen queried whether ratepayers are getting the best return from the (existing?) lease, but otherwise the questions raised are not matters for the Council in considering whether to grant a lease, but accounting questions for the Queen Elizabeth Park Trust relating to their income sources and depreciation charges.

Whilst the concerns and queries raised are of potential interest to Council as a founding member of the Queen Elizabeth Park Trust with Trustee nomination/appointment rights, they do not relate specifically to the public consultation matter, being the alienation of the Blue Lake Holiday (Caravan) Park by lease for a period of up to 21 years.

The submission from John Kirby requests that Council defer a decision on granting a further lease until the Queen Elizabeth Park Trusts Financial Statements are made available to the public and in any event until after the 2014 Council elections and further that Council scrutinise the corporate governance of the Queen Elizabeth Park Trust.

Conclusion

Elected Members will be aware that during the Council election/caretaker period commencing on 2nd September 2014 the making of designated and other significant decisions is prohibited, however Council is expected to operate on a 'business as usual' basis in the lead up to and during that period.

This leasing matter (including the public consultation that has been conducted) has arisen and is under consideration during the term of the current Council and is not yet affected by the election/caretaker period.

It is for Council to determine whether to proceed with making any decision on this leasing matter at this time.

It will be for the incoming Council following the November 2014 Elections to consider its nomination of Trustees to the Queen Elizabeth Park Trust from that time and any considerations in relation to its expectations of the Queen Elizabeth Park Trust as a member organisation.

RECOMMENDATION

(a) Corporate and Community Services Report No. 55/2014 be received;

(b) having considered submissions received on the proposal to lease the Blue Lake Holiday (Caravan) Park (Lot 101 in CT5961/294) to the Queen Elizabeth Park Trust on 'community terms' for a period not exceeding 21 years, Council proceed with offering a grant of lease, upon such reasonable terms and conditions for the periodical upkeep and development of the leased land and associated areas as negotiated by the Chief Executive Officer, subject to any other necessary approvals for the lease of the land having been obtained.

(c) the Chief Executive Officer and Mayor be authorised to affix the Common Seal to any documentation necessary to give effect to a lease granted in accordance with resolution part (b).

Michael McCARTHY
GOVERNANCE OFFICER

Sighted:

Mark McSHANE
CHIEF EXECUTIVE OFFICER

11th August 2014
MMcC

ATTACHMENT 1 – AR14/29242 – Submission – Queen Elizabeth Park Trust
ATTACHMENT 2 – AR14/29458 – Submission – Douglas Mullen
ATTACHMENT 3 – AR14/29459 – Submission - John Kirby

City of
Mount Gambier

COUNCIL RESOLUTION 21/11/2017

13.5 Leasing - Blue Lake Golf Course - Report No. AR17/41635

(a) That Strategic Standing Committee Report No. AR17/41635 titled '*Leasing – Blue Lake Golf Course*' as presented to the Strategic Standing Committee on 13 November 2017 be noted.

(b) That the Chief Executive be authorised to commence public consultation on a proposed lease and licence areas for the Blue Lake Golf Course and Driving Range allotments shown as Areas "A", "B" and "C' in the plans attached to Report No. AR17/41635 on 'community terms' for a period to 31 October 2035.

(c) A further report to be presented for Council to consider any submissions received on the proposed leases of the Blue Lake Golf Course and whether to grant leases to the Queen Elizabeth Park Trust.

(d) In the event that no submissions are received or no submissions are received objecting to the proposal, the Chief Executive Officer be authorised to negotiate, have prepared and to affix the Council seal to any documents necessary to give effect to a lease and licence for the Blue Lake Golf Course and Driving Range allotments located on Grant Avenue and shown as Areas "A", "B" and "C' in the plans attached to Report No. AR17/41635 on Grant Avenue to the Queen Elizabeth Park Trust.

Moved: Cr Lynagh Seconded: Cr Von Stanke Carried

City of
Mount Gambier

REPORT TITLE	Leasing – Blue Lake Golf Course
COMMITTEE	Strategic Standing Committee
MEETING DATE:	13 November 2017
REPORT NO.	AR17/41635
RM8 REFERENCE	AF11/1407
AUTHOR	Michael McCarthy
SUMMARY	A report to recommend long term leases and licence of the Blue Lake Golf Course and Driving Range be granted to the Queen Elizabeth Park Trust.
COMMUNITY PLAN REFERENCE	Goal 3: Our Diverse Economy

REPORT RECOMMENDATION

(a) That Strategic Standing Committee Report No. AR17/41635 titled '*Leasing – Blue Lake Golf Course*' as presented to the Strategic Standing Committee on 13 November 2017 be noted.

(b) That the Chief Executive be authorised to commence public consultation on a proposed lease and licence areas for the Blue Lake Golf Course and Driving Range allotments shown as Areas "A", "B" and "C' in the plans attached to Report No. AR17/41635 on 'community terms' for a period to 31 October 2035.

(c) A further report to be presented for Council to consider any submissions received on the proposed leases of the Blue Lake Golf Course and whether to grant leases to the Queen Elizabeth Park Trust.

(d) In the event that no submissions are received or no submissions are received objecting to the proposal, the Chief Executive Officer be authorised to negotiate, have prepared and to affix the Council seal to any documents necessary to give effect to a lease and licence for the Blue Lake Golf Course and Driving Range allotments located on Grant Avenue and shown as Areas "A", "B" and "C' in the plans attached to Report No. AR17/41635 on Grant Avenue to the Queen Elizabeth Park Trust.

Background

The Blue Lake Golf Course forms part of the land parcels managed and leased by the Queen Elizabeth Park Trust (QEPT). The QEPT is an incorporated body with membership comprising the City of Mount Gambier and Mount Gambier Chamber of Commerce established for such purposes. The current leases for the golf course are due to expire in June 2019 and the QEPT has approached Council to commence a renewal process for a further period.

In 2014 Council considered Corporate and Community Services (CCS) Report No 48/2014 relating to an early renewal of the Blue Lake Holiday (Caravan) Park lease to the QEPT for 21 years to secure proposed capital investment by the sub-tenant.

Reasons for offering the lease to the sitting tenant in lieu of the open market included:

- The QEPT and Council sharing similar objectives (including to *'promote tourism and development of open space in Mount Gambier').*
- The QEPT's incorporated structure providing longevity as a lessee.
- The QEPT not being profit driven with any returns able to be re-invested into the local community rather than to business owners/shareholders.
- The QEPT Board being appointed (and thus influenced) by the Mount Gambier Chamber of Commerce and Council.
- Other 'community leased' premises are re-offered to sitting tenants whose use is also consistent with Council objectives (e.g. provision of sporting/community facilities).

CCS Report No 48/2014 presented that on balance it would appear that the continuation of an open and transparent lease arrangement with the QEPT would be consistent with the principles to be observed by a council as specified in Section 8 of the Local Government Act 1999 (the Act); and would not be in contravention of Section 49 of the Act in relation to contracting and tendering.

At the time, Council determined to proceed with a 21 year lease of the Holiday (Caravan) Park subject to the consideration of submissions on public consultation, a Local Government Act requirement for a lease of community land for a term exceeding 5 years.

Prior to 2014 the Holiday (Caravan) Park and Golf Course leases were all aligned to expire on 30 June 2019. At the time the golf course lease was not considered for renewal due to the added complication of Ministerial approval that was required for a lease of Crown Land. The Holiday (Caravan) Park lease was drafted including specific rental provisions in the event the golf course leases were not renewed by either party.

In recent months changes to the Crown Land Management Act have commenced that simplify the leasing process whereby Ministerial approval is no longer required for certain leased uses of Crown Land which includes the current golf course lease/use.

Community land leasing provisions of the Local Government Act have also been amended to provide a maximum lease and renewal term of 42 years (previously 21 years).

This background provides relevant context for consideration of the current lease and licence request.

Discussion

The Blue Lake Golf Course leases (for separate parcels either side of Grant Avenue) are due to expire in June 2019 and it is timely for Council to consider their renewal, particularly if any significant changes to the leasing arrangements/tenant are proposed.

The QEPT have requested that the leases for the golf course be renewed for a further period and to also include a licence arrangement for the informal driving range area that is located south of the intersection of Grant Avenue and Orchard Road.

Diagrams indicating the current lease areas (Areas “A” and “B”) and proposed licence area (Area “C”) are attached. (Refer Attachment 1)

On the same basis as previously accepted by Council for the Blue Lake Holiday (Caravan) Park, it is proposed that the QEPT be granted further tenure of the golf course and driving range on similar terms and linked to the Holiday (Caravan) Park lease. That is the QEPT be responsible for ALL matters associated with the leased land, improvements and operations and including 5 year rolling works and maintenance plans to ensure the appropriate management of the Community/Crown Land).

Subject to necessary public consultation, it is proposed that the term of the golf course leases and licence be until 31 October 2035 with intervening renewals coinciding with the Holiday (Caravan) Park lease. Any extension beyond 2035 would be conditional upon public consultation and consideration by Council to align with a further extension of the Holiday (Caravan) Park lease. Council may wish to consider such extension now or at a future date.

Proposed lease terms would require any sub-tenancy arrangements to be negotiated and formally documented on a commercial basis including contribution toward the objectives of the head lease and consent of the Council administration in these respects. Any such commercial arrangements would be negotiated by the QEPT following confirmation of future tenure for the leased site.

Please note that any significant infrastructure development on the Crown Land portion of the golf course (i.e. the portion adjacent the caravan park and including the clubhouse) would require further liaison with the Department of Environment, Water and Natural Resources (Crown Lands) to determine whether the activities are considered a significant change to the use reinstating Ministerial consent to the lease.

Conclusion

Having considered the request from the Queen Elizabeth Park Trust this report recommends that public consultation be commenced on the proposed lease and licence of the Blue Lake Golf Course and Driving Range land parcels on Grant Avenue on ‘community terms’ for a period to 31 October 2035.

A further report would be presented for Council to consider any submissions received objecting to the proposal and whether to grant such lease and licence to the Queen Elizabeth Park Trust.

Attachments

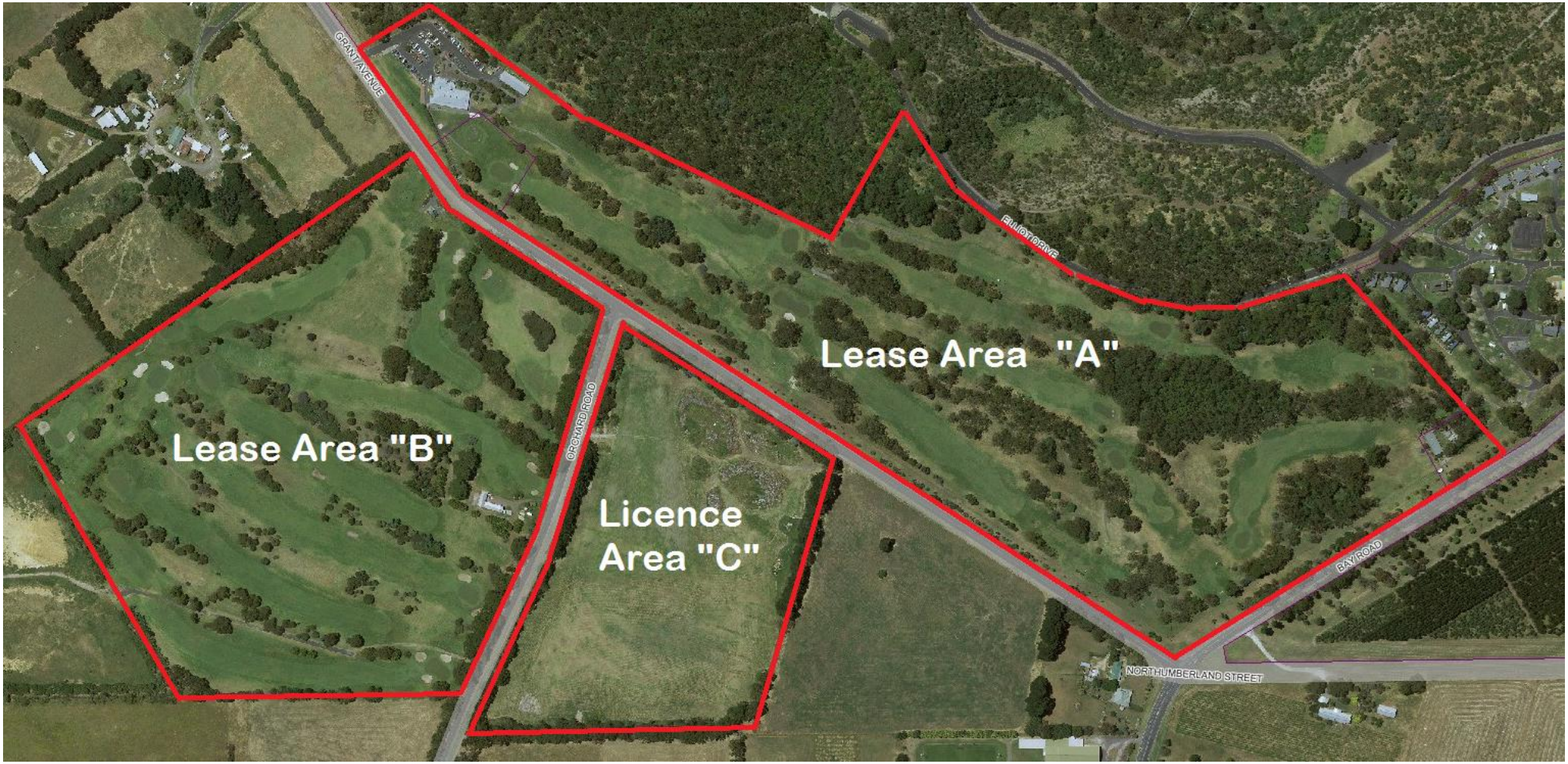
Attachment 1 (AR17/45107): Lease and Licence Overview Plan and Detailed Plans

Michael McCARTHY
MANAGER GOVERNANCE & PROPERTY

Pamela LEE
GENERAL MANAGER COUNCIL BUSINESS SERVICES

11 October 2017
MMcC

Blue Lake Golf Course - Lease and Licence Overview Plan



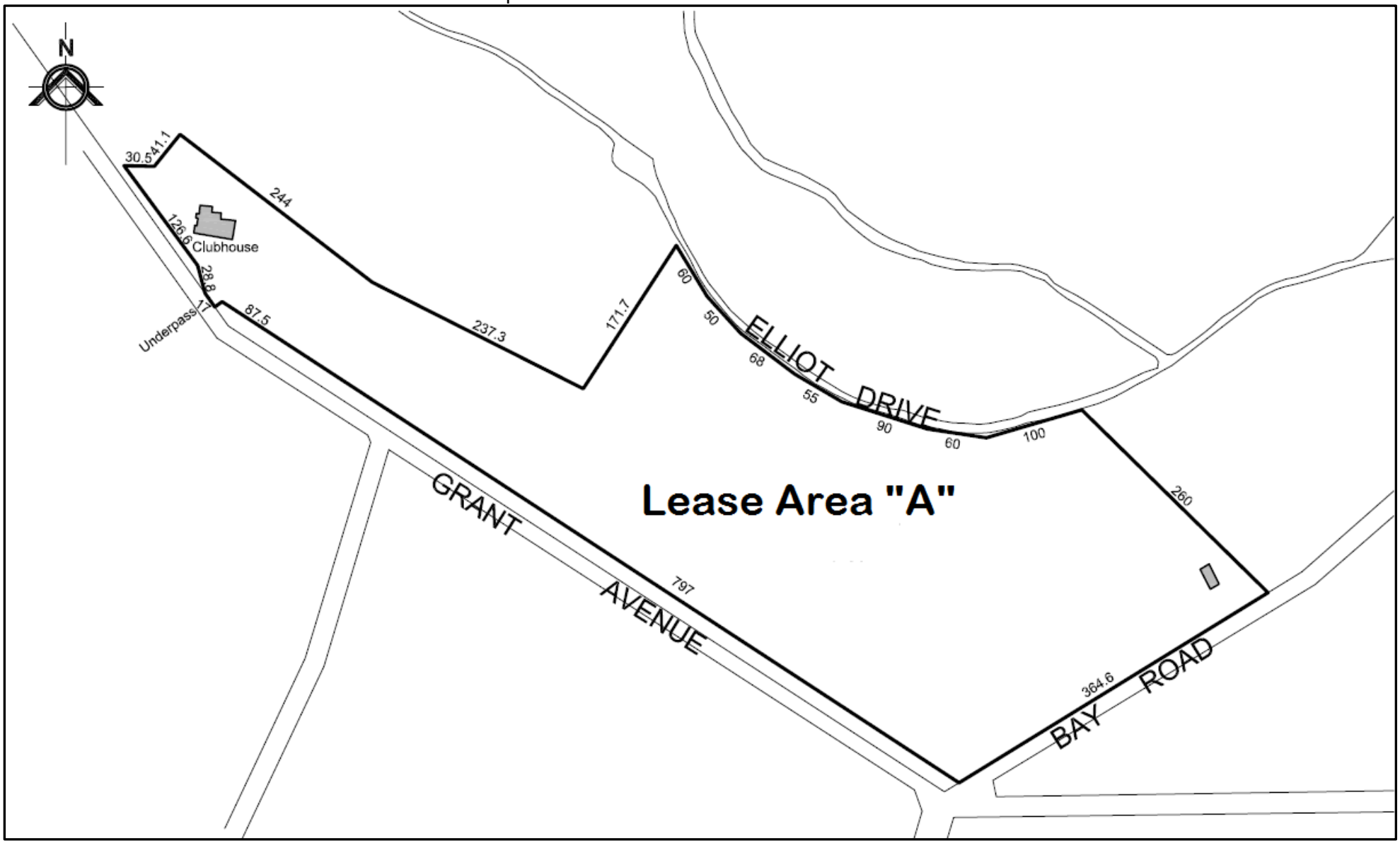
Lease Area “A” – refer detailed plan

Lease Area “B” – refer detailed plan

Licence Area “C” comprises:

Section 249 in CT5427/997
Lot 783 in FP 194585 in CT5827/571

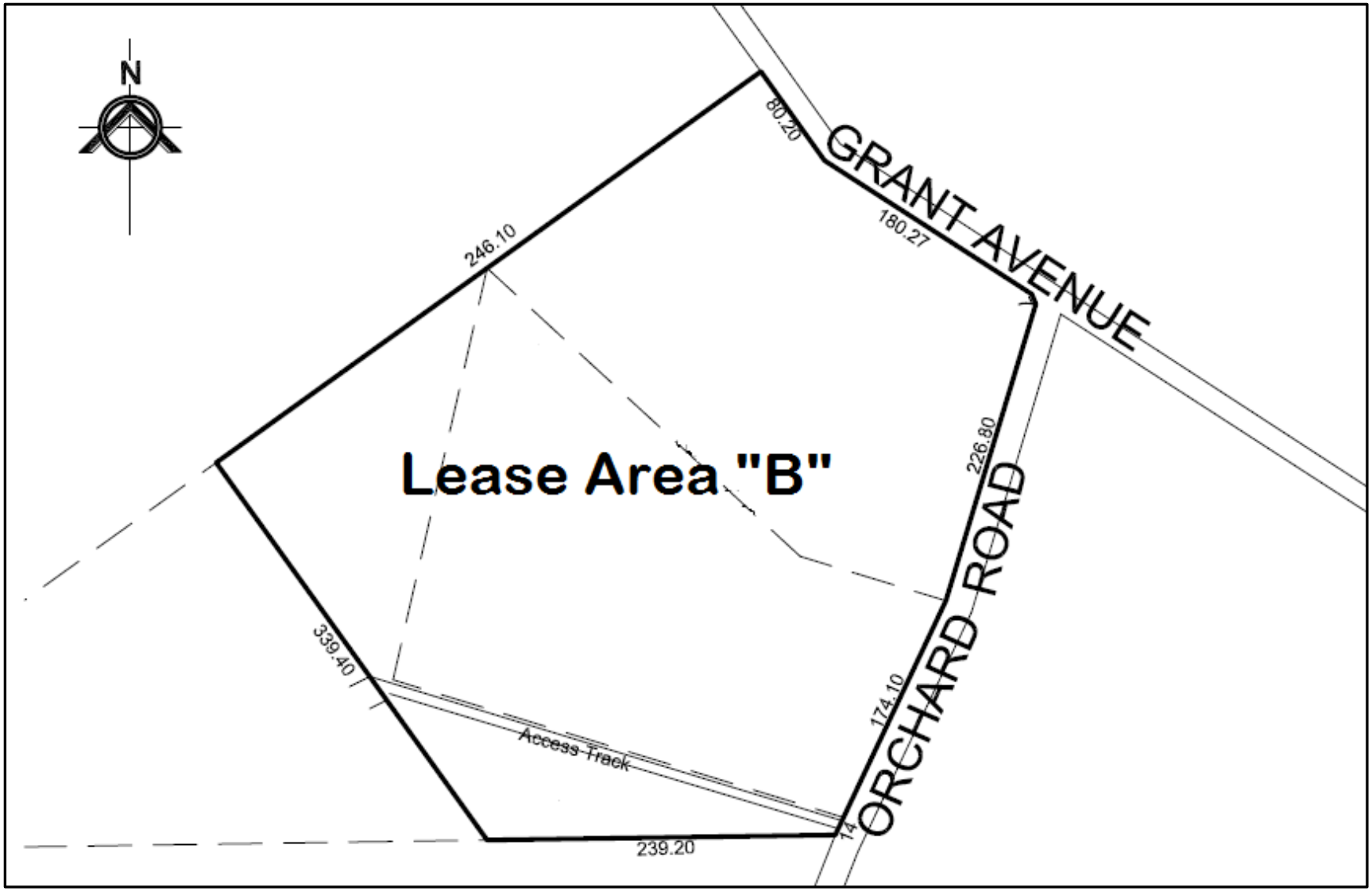
Blue Lake Golf Course – Lease Plan Area “A” detailed plan



Lease Area “A” comprises:

Portion of Lot 100 in DP57420 in CR5947/869

Blue Lake Golf Course – Lease Plan Area “A” detailed plan



Lease Area “B” comprises:

Lot 1 in FP5701 in CT5499/889
Lot 2 in FP5701 in CT5499/888
Portion of Lot 3 in FP5701 in CT5499/887

QUEEN ELIZABETH PARK
CARAVAN PARK LEASE

CITY OF MOUNT GAMBIER

(Council)

AND

QUEEN ELIZABETH PARK TRUST INCORPORATED

(Lessee)

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DATE

CITY OF MOUNT GAMBIER of 10 Watson Terrace, Mount Gambier SA 5290 (**Council**)

QUEEN ELIZABETH PARK TRUST INCORPORATED of PO Box 68, Mount Gambier SA 5290

(**Lessee**)

BACKGROUND

A. The Council is the registered proprietor of the Leased 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.

AGREED TERMS

1. ACKNOWLEDGEMENT OF BACKGROUND

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

2. DEFINED TERMS AND INTERPRETATION

2.1 **Introductory**

In the Lease, unless the contrary intention appears:

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

2.1.2 words beginning with capital letters are defined in clause 2.2;

2.1.3 a reference to a clause is a reference to a clause in this Lease;

2.1.4 a reference to an Item is a reference to an item in the First Schedule;

2.1.5 a reference to a Schedule is a reference to a schedule of this Lease; and

2.1.6 a reference to an Annexure is a reference to an annexure to this Lease.

2.2 **Defined Terms**

In this Lease:

Act means the *Retail and Commercial Leases Act 1995*.

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 16).

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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.

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 Term described in Item 2.

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.

CPI means the consumer price index published by the Australian Bureau of Statistics for All Groups (Adelaide) or the index which replaces it under special condition 1.6.

Current Market Rent means the best rent that can be obtained for the Premises in an open market by a willing but not anxious lessor with or without vacant possession and on the following conditions:

(a) on the terms of this Lease for the whole of the Term (and not just the balance of the Term);

(b) on the basis that the Lessee has complied with all its obligations under this Lease;

(c) not taking into account any damage or destruction to the Leased Land and not taking into account any resulting suspension or abatement of Rent;

(d) not taking into account any disturbance or nuisance to the Lessee's use of the Leased Land caused by any act or neglect of the Council or any adjoining owner or occupier;

(e) not taking into account any improvements or fixtures erected or installed at the Lessee's expense which the Lessee is permitted to remove at the end of this Lease;

(f) taking into account any increase in value of the Leased Land arising from any permanent improvements on the Leased Land at the expense of either the Lessee or the Council and which the Lessee is not entitled to remove;

(g) not taking into account any goodwill attributable to the Leased Land by reason of any trade, business or actions carried on by the Lessee; and

(h) not taking into account any cash, premium, payment, abatement, allowance or other incentive paid, offered or allowed in respect of this Lease or being offered or given in respect of comparable premises to induce lessees to take a lease of or remain in such comparable premises.

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Deed of Surrender means the deed described in clause 17 and attached as Annexure B.

Default Rate means:

(a) 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

(b) 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.

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

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

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

Improvements means the interior and exterior of all 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.

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

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.

Market Review means a review of Rent to Current Market Rent as set out in Special Condition 1.

Outgoings means the Outgoings described in Item 6.

Payment Date means the Commencement Date and annually on the anniversary of that date.

Permitted Use means the use described in Item 4.

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).

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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, subject to the Act, land tax (on a single holding basis).

Rent means the amount described in Item 3.

Rental Arrangements Policy means the R200 – COMMUNITY LAND (RESERVES) Lease/Licence/Rental Arrangements Policy attached as Annexure B.

Review Date means each date described in Item 7 of the First Schedule.

Review Method means the relevant method of rent review in Special Condition 1.

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.

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 term described in Item 2 and any period during which the Lessee holds over or remains in occupation of the Leased Land.

Valuer means a qualified valuer appointed to make a determination under this Lease and:

(a) who is appointed by agreement of the Council and the Lessee or, failing agreement within 14 days of either notifying the other of the requirement for such appointment, at the request of either the Council or the Lessee, by the President or acting President of the Institute;

(b) who has practised as a valuer with a minimum of five years relevant experience; and

(c) who acts as an expert and not as an arbitrator.

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

2.3 **Interpretation**

Unless the contrary intention appears:

2.3.1 headings are for convenience only and do not affect interpretation;

2.3.2 the singular includes the plural and vice-versa;

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2.3.3 a reference to an individual or person include a corporation, partnership, joint venture, authority, trust, state or government and vice versa;

2.3.4 a reference to any party in this Lease, or any other document or arrangement referred to in this Lease, includes that party's executors, administrators, substitutes, successors and assigns;

2.3.5 a reference to any document (including this Lease) is to that document as varied, novated, ratified or replaced from time to time;

2.3.6 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;

2.3.7 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;

2.3.8 'Including' and similar expressions are not and must not be treated as words of limitation;

2.3.9 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

2.3.10 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.

2.4 **Retail and Commercial Leases Act**

2.4.1 If the Act applies to this Lease, then this Lease will be read and interpreted subject to the provisions of the Act and, to the extent to which there is any inconsistency with the provisions of the Act, those provisions of the Act will override the terms of this Lease.

2.4.2 Any right, power or remedy of the Council or obligation or liability of the Lessee that is affected by the Act (if applicable) shall be unenforceable or void but only to the extent that it is expressly made unenforceable or void by the Act.

3. GRANT OF GROUND LEASE

3.1 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 set out in this Lease.

3.2 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.

3.3 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:

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3.3.1 the degree or purpose of affixation of the Improvements or any part of the Improvements;

3.3.2 whether or not the Improvements or any part of the Improvements is a fixture or has or will become a fixture;

3.3.3 any law to the contrary (which is excluded to the extent permitted at law); or

3.3.4 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.

3.4 Clause 3.3 does not affect the Council's right under clause 13.2 to require the Lessee to remove any Improvements.

4. RENT AND RENT REVIEW

4.1 Payment of Rent

The Lessee must pay to the Council the Rent by equal annual instalments in advance on each Payment Date.

4.2 Rent Review

The Lessee acknowledges and agrees that the Rent will be reviewed annually on each anniversary of the Commencement Date in accordance with the Rental Arrangements Policy.

4.3 Lessee Acknowledgement

The Lessee acknowledges that it has read and understood the Rental Arrangements Policy prior to executing this Lease.

5. RATES, TAXES, POWER AND OTHER UTILITIES

5.1 Liability for Rates and Taxes

5.1.1 The Lessee must pay or reimburse the Council all Rates and Taxes levied, assessed or charged in respect of the Leased Land or upon the owner or occupier of the Leased Land.

5.1.2 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.

5.2 Payment of Outgoings

5.2.1 The Lessee must pay or reimburse the Council all Outgoings levied, assessed or charged in respect of the Leased Land;

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

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5.3 **Power and Other Utilities**

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

5.3.2 If there is no separate meter for recording or measuring the services and utilities consumed on or from the Leased Land, then the Council may install the necessary meters and pass on the costs to the Lessee.

5.3.3 Without limiting the generality of this clause 5.3, the Lessee will comply in all respects with the *Electricity (General) Regulations 1997* and any other applicable electricity laws.

6. USE OF LEASED LAND

6.1 **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 any other use (without the Council's prior written consent).

6.2 **Alterations by Lessee**

6.2.1 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.

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

6.2.3 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.

6.2.4 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.

6.2.5 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.

6.2.6 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.

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6.3 **Offensive Activities**

The Lessee must not carry on any offensive or dangerous activities on or from the Leased Land or create a nuisance or disturbance either:

6.3.1 for the Council; or

6.3.2 for the owners or occupiers of any adjoining property; and

must ensure at all times that activities conducted on or from the Leased Land will not bring any discredit upon the Council.

6.4 **Use of Facilities**

6.4.1 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.

6.4.2 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.

6.5 **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:

6.5.1 the Lessee's use and occupation of the Leased Land; and

6.5.2 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).

6.6 **No Alcohol**

The Lessee must not serve, sell or provide to persons alcohol or alcoholic beverages on the Leased Land without the prior written consent of the Council.

6.7 **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:

6.7.1 are approved by the Council; and

6.7.2 comply with any relevant Statutory Requirements.

6.8 **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:

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6.8.1 any electrical, gas powered or other machinery or equipment which may pose a danger, risk or hazard;

6.8.2 any chemicals or other dangerous substances which may pose a danger, risk or hazard; or

6.8.3 any heavy equipment or items which may damage the Leased Land.

6.9 **Fire Precautions**

The Lessee must, at its own cost:

6.9.1 comply with all requirements and directives of the Council with regard to fire safety systems and procedures including fire evacuation drills and other procedures;

6.9.2 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

6.9.3 without limiting clauses 6.9.1 and 6.9.2, the Lessee will undertake maintenance of the fire safety equipment.

6.10 **Notice of Defect**

The Lessee must:

6.10.1 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

6.10.2 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.

6.11 **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.

7. INSURANCE

7.1 **Lessee must insure**

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

7.1.1 public risk insurance for at least the amount in Item 5 (or any other amount the Council reasonably requires) for each claim;

7.1.2 all insurance in respect of the Lessee's Equipment and the Improvements for its full replacement value;

7.1.3 plate glass insurance if required by Council against usual risks; and

7.1.4 other insurances required by any Statutory Requirement or which the Council reasonably requires.

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7.2 **Requirements for policies**

Each policy the Lessee takes out under this clause 7 must:

7.2.1 be with an insurer and on terms reasonably approved by the Council;

7.2.2 be in the name of the Lessee and note the interest of the Council and any other person the Council requires;

7.2.3 cover events occurring during the policy's currency regardless of when claims are made; and

7.2.4 note that despite any similar policies of the Council, the Lessee's policies will be primary policies.

7.3 **Evidence of Insurance**

The Lessee must give the Council certificates evidencing the currency of the policies the Lessee has taken out under this clause 7. During the Term the Lessee must:

7.3.1 pay each premium before it is due for payment;

7.3.2 give the Council certificates of currency each year when the policies are renewed and at other times the Council requests;

7.3.3 not allow any insurance policy to lapse or vary or cancel it without the Council's consent; and

7.3.4 notify the Council immediately if a policy is cancelled or if an event occurs which could prejudice or give rise to a claim under a policy.

7.4 **Insurance affected**

7.4.1 The Lessee must not do anything that may:

(a) prejudice any insurance of the Leased Land; or

(b) increase the premium for that insurance.

7.4.2 If the Lessee does anything (with or without the Council's consent) that increases the premium of any insurance the Council has in connection with the Leased Land, the Lessee must on demand pay the amount of that increase to the Council.

8. REPAIR AND MAINTENANCE

8.1 **Repair, Maintain and Replace**

8.1.1 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.

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8.1.2 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.

8.1.3 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 8.1.1, 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,

which is necessary for the Lessee to comply with clause 8.1.1.

8.2 **Cleaning**

The Lessee must keep the Leased Land and the Improvements clean and tidy and must not do (or fail to do) anything that may attract vermin, insects and other pests to the Leased Land.

9. TRANSFERRING, SUBLETTING AND CHARGING

9.1 **Transfer**

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

9.1.1 the proposed transferee does not change the Permitted Use:

9.1.2 the proposed transferee is able to meet the financial obligations under the Lease;

9.1.3 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.

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

9.2 **Subletting**

The Lessee must not sublet or sublicense any part of the Leased Land without the written consent of the Council.

9.3 **Charging**

9.3.1 The Lessee must not charge the Lessee's interest in this Lease or the Improvements or Lessee's Equipment without the Council's consent.

9.3.2 If the Council consents to a charge on the Lessee's Equipment or the Improvements 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.

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9.4 **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 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.

9.5 **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 9.

10. LESSEE GOVERNANCE

10.1 The Lessee warrants and agrees that it will comply with the Queen Elizabeth Park Trust Incorporated's constitution and Rules adopted and signed as at 31 October 2007 as amended from time to time (**Constitution**).

10.2 The Lessee warrants and agrees that it shall use its best endeavours to meet the objectives set out in the Constitution and will provide to the Council annually on the anniversary of the Commencement Date a written summary in a form satisfactory to Council setting out the activities conducted by the Lessee in relation to the Leased Land that meet the objectives of the Constitution for the previous twelve (12) month period.

10.3 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 and a five (5) year rolling works and maintenance plan.

11. COUNCIL'S OBLIGATIONS AND RIGHTS

11.1 **Quiet Enjoyment**

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

11.2 **Right to enter**

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

11.2.1 to see the state of repair of the Leased Land;

11.2.2 to do repairs to the Leased Land or other works which cannot reasonably be done unless the Council enters the Leased Land;

11.2.3 to verify the Lessee's compliance with the terms of this Lease;

11.2.4 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

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11.2.5 to show prospective lessees through the Leased Land.

11.3 **Emergencies**

In an emergency the Council may:

11.3.1 close the Leased Land; and

11.3.2 prevent the Lessee from entering the Leased Land.

11.4 **Restrictions**

11.4.1 The Council may install, use, maintain, repair, alter, and interrupt Services.

11.4.2 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.

11.5 **Right to Rectify**

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

12. DAMAGE OR DESTRUCTION

12.1 **Termination for destruction or damage**

12.1.1 If the Improvements are destroyed or damaged so that the Leased Land is unfit for the Permitted Use then within 3 months after the damage or destruction occurs, the Lessee must give the Council a notice either:

(a) terminating this Lease (on a date at least 1 month after the Lessee gives notice); or

(b) advising the Council that the Lessee intends to repair the Improvements so that the Lessee can access, occupy and use the Leased Land.

12.1.2 If the Lessee gives a notice under clause 12.1.1(b) but does not carry out the intention within a reasonable time, the Council may give notice to the Lessee that the Council intends to end the Lease if the Lessee does not do whatever is necessary to make the Leased Land accessible and fit for use and occupation by the Lessee within a reasonable time (having regard to the nature of the required work).

12.1.3 If the Lessee does not comply with clause 12.1.1 or with the Lessee's notice under clause 12.1.1, the Council may end this Lease by giving the Lessee not less than 1 month's notice.

12.2 **Reduction or abatement of rent**

12.2.1 While the Leased Land is unfit or inaccessible, the Yearly Amounts are reduced unless:

(a) the Leased Land is unfit or inaccessible; or

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(b) an insurer refuses to pay a claim;

as a result of a deliberate or negligent act or omission of the Lessee.

12.2.2 The level of the reduction (if any) depends on the nature and extent of the damage.

12.2.3 If the level of the reduction (if any) cannot be agreed it must be determined by a Valuer.

13. RIGHTS AND OBLIGATIONS ON EXPIRY

13.1 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.

13.2 Handover of Possession

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

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

13.2.2 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, additions and Improvements were authorised by the Council or not;

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

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

13.3 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 subject to and in accordance with the requirements of the Act.

13.4 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:

13.4.1 either party may terminate on one month's notice given at any time; and

13.4.2 is on the same terms as this Lease.

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14. BREACH

14.1 Payment Obligations

14.1.1 The Lessee must make payments due under this Lease:

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

(b) without set-off, counter-claim, withholding or deduction;

(c) to the Council or as the Council directs; and

(d) by such means as directed by the Council.

14.1.2 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.

14.2 Set Off

The Council may, by notice to the Lessee, set off against any amount due and payable under this Lease by the Council to the Lessee, any amount due and payable by the Lessee to the Council under this Lease or under any other agreement or arrangement.

14.3 Council's Rights on Breach

14.3.1 If the Lessee is at any time in breach of any of its obligations under this Lease, and the Lessee fails to remedy that breach to the 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.

14.3.2 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.

14.4 Default, Breach and Re-Entry

In the event that:

14.4.1 any moneys (or part of any moneys) payable under this Lease are unpaid for the space of 7 days after any day on which the same ought to have been paid (although no formal or legal demand has been made);

14.4.2 the Lessee commits, permits or suffers to occur any breach, or default in the due and punctual observances and performance of any of the covenants, obligations and provisions of the Lease;

14.4.3 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

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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 Law*;

(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.

14.4.4 execution is levied against the Lessee and not discharged within 30 days;

14.4.5 any property in or on the Leased Land is seized or taken in execution under any judgment or proceedings;

14.4.6 the Leased Land are 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 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 the Lease.

14.5 **Rights of Council not Limited**

The rights of the Council under this Lease and at law resulting from a breach of this Lease by the Lessee shall not be excluded or limited in any way by reason of the Council having or exercising any powers under this clause 14.

14.6 **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 payable pursuant to this Lease.

14.7 **Repudiation and Damages**

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

(a) the obligation to pay Rent;

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(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, sub-letting, mortgaging and licensing.

14.7.2 If the Council accepts payment of rent or any other moneys late or does not act or exercise any rights immediately or at all in respect of any breach of an essential term, that conduct on the part of the Council will not be deemed to amount to a waiver of the essential nature of that essential term.

14.7.3 If the Lessee breaches any essential term, that conduct on the part of the Lessee will be deemed to constitute a repudiation of this Lease and the Council may at any time thereafter rescind this Lease by accepting that repudiation.

14.7.4 The Lessee agrees that if this Lease is terminated by the Council because of a breach by the Lessee of an essential term, or if the Lessee repudiates this Lease and the Council accepts that repudiation 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.

14.7.5 The rights of the Council under this clause 14.7 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.

14.8 Interest on Overdue Amounts

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

15. INDEMNITY AND RELEASE

15.1 Risk

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

15.2 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:

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15.2.1 any act or omission of the Lessee;

15.2.2 the overflow or leakage of water or any other harmful agent into or from the Leased Land;

15.2.3 any fire on or from the Leased Land;

15.2.4 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;

15.2.5 a breach of this Lease by the Lessee; or

15.2.6 the Lessee's use or occupation of the Leased Land.

15.3 **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 except to the extent that they are caused by the Council's negligence.

15.4 **Indemnities are independent**

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

16. GOODS AND SERVICES TAX

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

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

16.1.2 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

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

16.2 Where the Agreed Consideration is to be increased to account for GST under this clause 16, the Council shall, on or before the date on which the Agreed Consideration is payable, issue a tax invoice to the Lessee.

16.3 If the Lessee does not comply with its obligations under the Lease or with its obligations under GST Legislation in connection with the 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.

17. DEED OF SURRENDER

The Council and the Lessee shall execute a deed of surrender in the form of the deed attached as Annexure B (**Deed**) as soon as reasonably practicable surrendering the Original Lease for no consideration whatsoever on the terms and conditions contained in the Deed and the parties acknowledge and agree that this Lease is subject to the execution of the Deed.

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18. GENERAL

18.1 Costs

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

18.1.1 all stamp duty assessed on this Lease;

18.1.2 one half of all other preparatory costs incurred by the Council of this Lease. For the purposes of this sub-clause, "preparatory costs" has the meaning described in the Act;

18.1.3 all costs including legal and other expenses incurred by the Council in connection with the preparing, negotiating, revising, engrossing and executing any document required to record any renewal, extension or variation of this Lease; and

18.1.4 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.

18.2 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.

18.3 Notice

18.3.1 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).

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

18.4 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.

18.5 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

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Leased Land and that no promises, representations or undertakings, other than those contained in this Lease, were made or given or relied upon.

18.6 **Resumption**

If the Council receives notice of resumption or acquisition of the Leased Land or any part of 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 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.

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EXECUTED as an **AGREEMENT**

The **COMMON SEAL** of)
CITY OF MOUNT GAMBIER)
was hereto affixed in the presence of)

.....
Mayor

.....
Chief Executive Officer

The **COMMON SEAL** of)
QUEEN ELIZABETH PARK TRUST)
INCORPORATED)
Was hereto affixed in the presence of)

Seal Holder

.....
Seal Holder

QUEEN ELIZABETH PARK TRUST INCORPORATED
COMMON SEAL

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FIRST SCHEDULE

ITEM 1 **Leased Land**	The whole of the land comprised in Certificate of Title Volume 5961 Folio 294.
ITEM 2 **Term**	Twenty one (21) years commencing on 1 November 2014 (**Commencement Date**) and expiring at midnight on 31 October 2035
ITEM 3 **Rent**	The Declared Figure per annum specified in Council's Lease Fee Policy R210 (exclusive of GST) (subject to review pursuant to clau 4
ITEM 4 **Permitted Use**	Caravan and camping park
ITEM 5 **Public Risk Insurance**	Twenty Million Dollars ($20,000,000.00)
ITEM 6 **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 Leased Land.
ITEM 7 **Review Date**	**Review Date** — **Review Method** 1 July 2019 — Market Review 1 July 2024 — Market Review 1 July 2029 — Market review 1 July 2034 — Market Review 1 July 2020, 2021, 2022, 2023, 2025 2026, 2027, 2028, 2030, 2031, 2032 and 2033 — CPI

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SECOND SCHEDULE

Special Conditions

The terms and conditions (if any) set out in the Second Schedule are deemed to be incorporated into this Lease and, in the event of any inconsistency with the terms and conditions contained in this body of this Lease, then these special conditions will prevail.

1. GOLF COURSE LEASES

1.1. The parties acknowledge that the Lessee is the current tenant of the Mount Gambier Golf Course pursuant to two separate lease agreements (**Golf Course Leases**) that expire on 30 June 2019.

1.2. The Lessee agrees that if after the expiry of the Golf Course Leases it is no longer the Lessee pursuant to a new lease arrangement over the golf course then the Rent will be reviewed as follows:

1.3. **Rent Review**

The Rent must be reviewed by Market Review or CPI on the dates and in accordance with the method set out in Item 7 of the First Schedule.

1.4. **Current Market Rent**

1.4.1. The Council may at any time give the Lessee written notice stating the Council's assessment of the Current Market Rent.

1.4.2. The Rent from and including the relevant Review Date is the amount stated in the Council's notice under special condition 1.4.1 unless the Lessee gives the Council written notice disagreeing with that amount (**Objection**) within 14 days after the Council's notice.

1.4.3. If the Lessee gives the Council an Objection, then the Rent must be determined by a Valuer.

1.4.4. The Valuer must determine the Current Market Rent under this clause.

1.4.5. The Council and the Lessee may make written submissions to the Valuer within 14 days after the Valuer is appointed.

1.4.6. Each party must forward to the other a copy of all written material provided to the Valuer when it is provided to the Valuer.

1.4.7. Within 14 days after receiving those written materials, a party may give written comments to the Valuer on the other party's written submissions.

1.4.8. The Valuer must make the determination in writing within 60 days after appointment, giving detailed reasons and specifying the matters required to be taken into account under this Lease). The determination is final and binding.

1.4.9. If the Valuer's determination is more than the Council's assessment of the Current Market Rent, the Lessee must pay all the costs of the

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valuation. In all other cases, the costs of the valuation must be shared equally between the Council and Lessee.

1.5. **CPI review**

Where the Review Method for any Review Date is CPI, the Rent on and from that Review Date is calculated as follows:

$$R_2 = R_1 \times \frac{\text{Current CPI}}{\text{Previous CPI}}$$

Where:

R_2 is the Rent on and from the Review Date; and

R_1 is the Rent immediately before the Review Date (disregarding any abatements, incentives or reductions).

1.6. **Change to CPI**

If the CPI is no longer published, either party may ask the President of the Institute to nominate an index which reflects the rate of price change in the area and group for the CPI and 'CPI' then means that index. Each party must pay one half of the President's costs for nominating an index.

1.7. **Rent pending determination**

1.7.1. The Rent may be reviewed at any time from a Review Date even if the review is instituted after that Review Date.

1.7.2. If the Rent to apply on and from a Review Date is not agreed or determined by that Review Date, the Lessee must continue to pay instalments of Rent at the rate that applied before the relevant Review Date until the Rent is determined.

1.8. **Adjustment once Rent determined**

Once the Rent to apply on and from a Review Date is determined, the Lessee must pay any shortfall, and the Council must allow any adjustment for overpayment at the next Payment Date.

1.9. **Other review**

Subject to the Act, the Council and Lessee may negotiate and agree a Rent to apply from a Review Date without following this clause.

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ANNEXURE A

RENTAL ARRANGEMENT POLICY

	R200 - COMMUNITY LAND (RESERVES) LEASE / LICENCE / RENTAL ARRANGEMENTS POLICY	Version No:	2
		Issued:	7 July 2014
		Next Review:	July, 2015

1. INTRODUCTION

This documents sets out the policy of the City of Mount Gambier ("Council") for:

1.1 leasing / licensing of Council community land (Reserves)to community based organisations;

1.2 expense recovery where community land is occupied by a sporting association and where Council maintains the facilities.

2. DEFINITIONS

"Community Land" – any *'local government land'* as defined in the Local Government Act 1999 that has not been excluded or revoked of its classification as community land, including land owned by Council or under Councils care control and management, and including reserves, ornamental grounds and parklands.

3. LEASE/LICENCE POLICY

3.1 Policy Provisions

Where Council proposes to (re)grant a lease or licence for any portion of community land to a community based not for profit organisation (including sporting clubs) pursuant to the provisions of the Local Government Act, then the conditions under which any lease or licence may be granted under (sub)delegation should include:

3.1.1 Lease Term:

term should not exceed ten (10) years;

3.1.2 Licence Term

term should not exceed five (5) years;

3.1.3 Public Liability Insurance:

minimum sum of $10,000,000.

minimum sum of $20,000,000 if any building works to be undertaken

3.1.4 Lease or Licence Fee:

is the "declared" figure per annum plus GST

the "declared" figure is the annual fee that Council resolves at the commencement of each financial year.

for all subsequent years of the lease / licence then the "declared" annual fee be increased (or decreased) by the overall percentage rate increase (or decrease) that Council adopts for each financial year on a compounding calculation plus GST.

The Chief Executive Officer may waiver payment of the declared figure in exceptional circumstances (eg where it is considered that payment would be of unreasonable detriment to the lessee/licensee - such as in the case of a newly created organisation).

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3.1.5 Rounding Down:

in applying part (b) of this Policy i.e. the compounding use of the overall percentage rate increase (or decrease) to the annual lease fee then the resultant calculation be rounded down to the nearest whole "five dollars".

3.2 Annual Review of 'Declared' Figure

3.2.1 In terms of the lease or licence fee, the declared lease fee be $400 (plus GST) for the 2014/15 financial year, calculated as follows:

$385 + 4.8% = $400 (+GST)

3.2.2 the Chief Executive Officer be authorised to amend the figures in clause 3.2.1 of this Policy on the basis set out in 3.1.4 and 3.1.5 above, on an annual basis.

4. RENTAL POLICY

4.1 Where Council maintains the recreation and sporting facilities on community land that is leased/licensed, occupied or used by a sporting organisation, then the following rental policy will apply when calculating the cost recovery by Council from that sporting organisation:

4.1.1 A Base Annual Rental is set to cover the annual maintenance costs of the reserve (playing area and immediate related surrounds) incurred by Council in the previous year and in respect of that specific occupier(s) anticipated/actual level of use;

4.1.2 The Base Annual Rental, may, under certain circumstances, be discounted by a 10% to 20% reduction in maintenance costs where full and free access to the facility is allowed to members of the general public (except when being used by clubs and associations);

4.1.3 A further reduction may occur, based on each specific occupier(s) ability to pay, based on a scale of one (1) to ten (10) with each scale point equivalent to 5% of the Base Annual Rental (maximum is 50%);

4.1.4 A further reduction may occur based on each specific occupier(s) special case, i.e.

Criteria - (each worth 5% discount - maximum of 35% discount):

- 1 = large capital costs incurred by Club;
- 2 = significant number of juniors;
- 3 = less than significant actual use, wear or tear of Council land;
- 4 = financial capacity of Club;
- 5 = nominal maintenance costs by Council;
- 6 = significant self help by Club;
- 7 = contribution to Mount Gambier economy (Major Events etc.)

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4.1.5 Tenants are responsible for the cost of services to buildings and floodlights, such as electricity, gas, water, etc.

5. REVIEW & EVALUATION

This Policy shall bereviewed during each term of Council, and at any other time as may be required by any legislative changes which may occur.

6. AVAILABILITY OF POLICY

This Policy will be available for inspection at Council's principal office during ordinary business hours and on the Council's website www.mountgambier.sa.gov.au. Copies will also be provided to interested members of the community upon request, and upon payment of a fee in accordance with Council's Schedule of Fees and Charges.

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	R200 - COMMUNITY LAND (RESERVES) LEASE / LICENCE / RENTAL ARRANGEMENTS POLICY	Version No:	2
		Issued:	7 July 2014
		Next Review:	July, 2015

File Reference:	AF11/1948
Applicable Legislation:	Local Government Act, 1999 Chapter 11 Part 1
Reference: Strategic Plan – Beyond 2015	Goal 1, Strategic Objective 7.
Related Policies:	R210 - Lease Term/Fee (superseded) R240 - Rental Where Council Maintains (superseded)
Related Procedures:	Nil
Related Documents:	Corporate and Community Services Report No. 12/1998 (Establishing Methodology)

DOCUMENT DETAILS

Responsibility:	Director - Corporate Services
Version:	2.0
Last revised date:	7 July, 2014
Effective date:	7 July, 2014
Minute reference:	CCS Item 12 - Report No. 33/2014 - 20th May, 2014
Next review date:	July, 2015
Document History First Adopted By Council: Reviewed/Amended:	 18th February, 1999 (Superseded Policies R210 and R240) 20th May, 2014, 7 July, 2014 - clause 3.2.1

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ANNEXURE B

DEED OF SURRENDER

DEED OF SURRENDER OF LEASE

CITY OF MOUNT GAMBIER

(Lessor)

AND

QUEEN ELIZABETH PARK TRUST INCORPORATED

(Lessee)

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DATE

CITY OF MOUNT GAMBIER of 10 Watson Terrace, Mount Gambier SA 5290 (Lessor)

QUEEN ELIZABETH PARK TRUST INCORPORATED of PO Box 68, Mount Gambier SA 5290 (Lessee)

BACKGROUND

A. The Lessor is registered as the proprietor of an estate in fee simple in the whole of the land more particularly described in Certificate of Title Register Book Volume 5961 Folio 294 (Premises) and has granted to the Lessee a lease of the Premises subject to and upon the terms and conditions contained in the Lease.

B. The Lease expires on the Expiry Date.

C. The Lessee is desirous of surrendering the Lease prior to the Expiry Date namely on the Surrender Date and the Lessor has agreed to accept such surrender for no consideration whatsoever but subject however to the terms and conditions set out in this deed.

1. DEFINITIONS AND INTERPRETATION

1.1 Background

The background set out above forms part of this deed and the parties agree that the background is true and correct.

1.2 Definitions

In this document, unless the context otherwise requires:

1.2.1 **Expiry Date** means 30 June 2019.

1.2.2 **Lease** means the memorandum of lease dated 10 November 1999 between the Lessor and the Lessee for the Premises.

1.2.3 **Surrender Date** means the date on which the surrender of the Lease shall take effect being 31 October 2014.

1.3 General

In this document, unless the context otherwise requires:

1.3.1 a reference to any document is a reference to that document as varied, novated or replaced from time to time;

1.3.2 the singular includes the plural and vice-versa;

1.3.3 a reference to a gender includes all genders;

1.3.4 the use of the word 'including' does not limit what else might be included;

1.3.5 a reference to a thing includes all or any part of it;

1.3.6 where a word or phrase is defined, its other grammatical forms have a corresponding meaning;

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1.3.7 a reference to a person or entity includes a natural person, a partnership, corporation, trust, association, unincorporated body, authority or other entity;

1.3.8 a reference to a party includes that party's legal personal representatives, successors and permitted assigns;

1.3.9 a term which purports to bind or benefit two or more persons binds or benefits them jointly and severally;

1.3.10 headings are inserted in this document for convenience only and are not intended to affect its interpretation; and

1.3.11 a reference to a statute, ordinance, code or other law includes regulations and other instruments issued under it and consolidations, amendments, re-enactments or replacements of any of them.

2. SURRENDER

The Lessee hereby surrenders the Lease and all of its rights, title and interest thereunder from the Surrender Date and the Lessor hereby accepts such surrender for no consideration whatsoever save for the warranties and undertakings given by the Lessee in this deed.

3. LESSEE'S WARRANTY AND INDEMNITY

The Lessee warrants and declares that it has duly and faithfully observed and performed all of the terms and conditions contained in the Lease and on the part of the Lessee to be observed and performed up to the date of execution and that there is no presently existing want of repair of any part of the Premises of any other breach of or default under the Lease and the Lessee hereby covenants and agrees with the Lessor that it will duly, promptly and faithfully observe and perform the terms and conditions contained in the Lease and on the part of the Lessee to be observed and performed as and from the date of execution by the Lessee up to the Surrender Date and the Lessee hereby indemnifies the Lessor from and against any loss, damage or injury it may sustain as a result of any breach by the Lessee of its obligations under this clause.

4. RELEASE

The Lessee hereby releases and forever discharges the Lessor in respect of any loss, damage, injury, claim, action, suit or demand it may have in respect of or arising howsoever out of any breach by the Lessor of its duties and obligations pursuant to the Lease up to the Surrender Date.

5. COSTS

The parties will bear their own costs and expenses in relation to the negotiation, preparation and execution of this deed.

6. STAMP DUTY

The Lessor will pay all stamp duty assessed or chargeable in respect of this document.

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7. GOVERNING LAW

This deed will be governed by the laws of South Australia. The parties submit to the jurisdiction of the courts of South Australia and agree to issue any proceedings relating to this deed in those courts.

8. SEVERANCE

Every provision of this deed is independent of the other. Any provision which is prohibited or unenforceable in any jurisdiction will be ineffective to the extent only of such prohibition or unenforceability and the other provisions will remain in force.

9. ASSIGNMENT

No party may assign or transfer any rights or obligations under this deed without the written consent of each of the other parties.

10. FURTHER ACTS

Each party will do all things necessary to give full effect to this deed and the transactions contemplated by this document.

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EXECUTED as a DEED

The COMMON SEAL of)
CITY OF MOUNT GAMBIER)
was hereto affixed in the presence of)

.....
Mayor

.....
Chief Executive Officer

The COMMON SEAL of)
QUEEN ELIZABETH PARK TRUST)
INCORPORATED)
was hereto affixed in the presence of)

.....
Seal Holder

.....
Seal Holder

QUEEN ELIZABETH PARK TRUST INCORPORATED
COMMON SEAL

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THIRD SCHEDULE
CARETAKER ACCOMMODATION

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COPY

CITY OF MOUNT GAMBIER

"the Council"

- and -

QUEEN ELIZABETH PARK TRUST INC

"the Lessee"

LEASE OF GOLF COURSE LAND

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THIS LEASE is made on the date appearing in Item 7 of the Schedule

BETWEEN: **CITY OF MOUNT GAMBIER** of 10 Watson Terrace Mount Gambier 5290 (together with its successors and assigns called "the Council")

AND: **QUEEN ELIZABETH PARK TRUST INCORPORATED** of PO Box 773 Mount Gambier 5290 (together with its respective successors and assigns called "the Trust")

COMMISSIONER OF STATE TAXATION
RECEIVE BUSINESS
ORIGINAL STAMPED (Copy 1 of 1)
16/12/1999 10:38:39 00446430.1
Annual Rental ($200.00)
LEASE

BACKGROUND:

A. The Council has the care, control and management of:

(I) the whole of Section 591 and portion of Section 241, Hundred of Blanche (by virtue of a dedication under the Crown Lands Act and published in the Gazette on 23.2.1989 at pages 564-5); and

(ii) Sections 242, Hundred of Blanche (by virtue of a dedication under the Crown Lands Act and published in the Gazette on 2.10.1975 at page 1818)

collectively in this Lease called "the Land".

B. By tenancy agreements dated 15 February 1979 and 3 September 1990 made between the parties, the Council leased to the Trust those portions of the Land identified on the attached Plan ("the Premises"), for terms each expiring on 30 June 1999.

C. Subject to the approval of a meeting of electors pursuant to Section 457 of the Local Government Act, and to the approval of the Minister of Local Government as required by Section 457(2) of that Act, the Council has agreed to grant to the Trust a further lease of the Premises for the term and upon the condition set out in this Agreement.

THE PARTIES AGREE as follows:

1. The parties agree that the above statements are true and form part of this Agreement.

2. **GRANT OF LEASE**

Subject to the matters referred to paragraph C above the Council grants to the Trust, and the Trust accepts, a lease of the Premises for the term set out in Item 3 of the Schedule, commencing on the date set out in Item 4 and subject to all the following terms.

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3. THE Trust'S OBLIGATIONS

The Trust agrees with the Council as follows:

3.1 Rent

3.1.1 To pay the rent set out in Item 5 of the Schedule (which may be reviewed from time to time) to the Council at the time specified in Item 5.

3.1.2 On the anniversary of the Commencement Date in the fifth year and in the tenth, and the fifteenth years the rent will be reviewed by agreement between the parties.

3.1.3 In the event that the parties have not reached agreement within 30 days after the relevant review date as to the amount of the reviewed rent, then either party may instruct an independent licenced Valuer, experienced in the determination of rentals for Golf Courses to determine a fair market rent for the Premises for the following five years. The decision of the Valuer will be binding on the parties and the costs of the Valuer will be shared equally between the Council and the Trust.

3.1.4 The reviewed rent will be payable from the relevant review date.

3.2 Rates and Taxes

To pay, on time and in full, all rates, taxes (excluding state Premises tax), assessments and charges which are now, or may at some time during the Term, be charged, levied or payable by either the Council or any occupier with respect to the Premises.

3.3 Utilities

To pay all charges for telephone, electricity, gas and water including excess water consumed on the Premises.

3.4 Use of Premises

Not to use or allow the Premises to be used for any purpose or activity other than that set out in Item 6 of the Schedule.

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3.5 **Legislation**

To comply (at its own cost and expense in all things) with the provisions of all acts, regulations, by-laws and all directions and orders of any local government or semi-government authority in relation to the Premises.

3.6 **Alcohol**

3.6.1 That alcohol or other prohibited substances may be sold or consumed or used on or in the vicinity of the Premises only in accordance with Council's consent and at all times in accordance with the provisions of the Liquor Licensing Act 1997.

3.6.2 That the Trust will not be permitted to install gaming machines on the Premises without first obtaining the Council's consent.

3.7 **Maintenance and Repair**

3.7.1 The Trust must notify the Council as soon as it becomes aware of anything on the Premises which requires repair by the Council.

3.7.2 The Trust must keep the Premises in good and tenant like repair (fair wear and tear and damage by fire, storm, tempest, act of god, war, riot, civil commotion and earthquake excepted).

3.7.3 The Trust will supply and replace, fit or install any items which are reasonably necessary to maintain and preserve the condition of the Premises and the Trust must continue to maintain those items during the term.

3.7.4 The Trust must ensure that the fairways, greens and tees are well watered, grassed and tendered so as to keep them in an attractive state suitable for use as a golf course.

3.7.5 All plumbing and drainage on the Premises must be maintained in good working order and be kept free from all blockages.

3.7.6 The Trust will install and maintain fire fighting equipment at the Premises to a level acceptable to the Council or the local fire fighting authority.

3.7.7 The Trust must keep the Premises in a clean and sanitary condition, free from dirt, rubbish and vermin.

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3.7.8 The obligations imposed upon the Trust in this clause are to be carried out at the Trust's cost.

3.8 **Entry by Council**

3.8.1 Provided that the Trust is given reasonable notice, the Trust will allow the Council to come onto the Premises for the purpose of inspecting its condition and state of repair.

3.8.2 If the Council finds that any part of the Premises needs repairing and for which the Trust is responsible, then the Council may notify the Trust.

3.8.3 If the Trust has not carried out the work required by the notice, to a reasonably acceptable standard, within the time set out in the notice, which unless in the case of an emergency will not be less than one month, then the Council may come onto the Premises at a reasonable hour to carry out the repairs. The cost of the repairs and any other reasonable expenses incurred by the Council will be recoverable from the Trust.

3.9 **Erection/Demolition of Buildings**

Unless with the Council's previously granted written consent, the Trust will not make any structural changes to the Premises such as erecting or demolishing any buildings, or other structures. Any approved alterations to the buildings must be carried out in accordance with all planning and building approvals.

3.10 **Signs/Floodlighting**

3.10.1 The Trust must not put up, attach or erect any signs on the Premises unless it has received the Council's prior written consent.

3.10.2 The Trust may not without the Council's prior written consent install or erect any floodlighting.

3.11 **Painting**

3.11.1 Upon Council's reasonable written request, the Trust will paint or otherwise treat all parts of any buildings or structures on the Premises which had been painted or treated on the Commencement Date, or during the term of the Lease. The Trust will use good quality materials and provide coverage of at least two coats.

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3.11.2 The Trust must comply with the Council's directions in relation to the colour scheme. The Lessee will be responsible for the costs of complying with this clause 3.11.

3.12 **Offensive Activities**

The Trust will not create a nuisance or disturbance either for the Council or for the occupiers of adjoining Premises, nor will it carry on any offensive or dangerous trade or business from the Premises.

3.13 **Offences**

The Trust will not carry on any activity or do anything or fail to do something which is or may become an offence under any act or regulation or by-law.

3.14 **Assignment**

3.14.1 The Trust is not permitted to transfer, assign, sublet or otherwise give up possession of the Premises unless it has received the Council's written consent. The Council agrees that it will not unreasonably withhold its consent.

3.14.2 The Trust will be responsible to satisfy the Council that any proposed new Trust will be a suitable body to lease the Premises.

3.15 **Surrender**

3.15.1 Upon the expiration or earlier determination of the Term, the Trust will peacefully and quietly surrender and give up possession of the Premises.

3.15.2 The Trust will leave the Premises in good order and cleanliness.

3.15.3 The Council may request the Trust to remove all the Trust's fixtures and fittings and in doing so cause no damage to the Premises. The Trust will be responsible for repairing at its own cost any damage caused in removing its fixtures and fittings.

3.15.4 Any reasonable costs incurred by the Council in repairing any damage caused by the Trust in surrendering the Premises may be recovered from the Trust.

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3.16 **Indemnity**

The Trust indemnifies the Council against all actions, claims, demands, losses, damages, costs and expenses for which the Council may become liable arising wholly or partly from any of the following:

3.16.1 the misuse, negligent use, waste or abuse by the Trust of the water, gas, electricity, oil or other services and facilities of the Premises;

3.16.2 the overflow, leakage or escape of water (including rain water) fire, gas, electricity, or other harmful agent in or from the Premises or caused or contributed to by any act or omission by the Trust;

3.16.3 loss, damage or injury from any cause whatsoever to property, or persons, caused or contributed to by the use of the Premises by the Trust;

3.16.4 loss, damage or injury from any cause whatsoever to property or persons inside or outside the Premises caused or contributed to by the neglect or default of the Trust; or

3.16.5 loss, damage or injury from any cause whatsoever to property or persons inside or outside the Premises caused or contributed to by the Trust's neglect or default to observe or perform any of the covenants, conditions, regulations and restrictions required to be complied with or adhered to by the Trust in accordance with this Lease.

In this clause the term "the Trust" will include the Trust's servants, agents, customers, contractors or other persons claiming through or under the Trust.

3.17 **Public Liability Insurance**

3.17.1 The Trust will take out and during the term continue to maintain a public risk insurance policy.

3.17.2 The policy will be in respect of injury, loss or damage occurring on the Premises it will note the Council's rights and interest as Lessor and also the indemnities provided by the Trust in favour of the Council.

3.17.3 The cover will be for a minimum amount of **TEN MILLION DOLLARS** ($10,000,000.00) per claim or any other amount which the Council negotiates with the Trust.

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3.17.4 The policy will bear an endorsement from the insurer that the insurer will notify the Council if the policy is allowed to lapse or is otherwise cancelled.

3.17.5 On the Commencement Date and on the anniversary of that date during the Term the Trust must provide Council with a copy of the Policy and receipt for payment of the premium.

3.18 **Contents Insurance**

The Trust must obtain insurance for its own contents which are located on the Premises.

3.19 **Breach of Insurance Conditions**

The Trust and the Council are not to do anything or fail to do something which has the affect of voiding the insurance policy or increasing the rate of premium.

3.20 **Release**

3.20.1 The Trust agrees to occupy, use and keep the Premises at the Trust's risk.

3.20.2 The Trust agrees to release the Council and its agents, servants, employees and contractors from all claims and demands of every kind resulting from any accident, damage or injury occurring on the Premises except if such accident damage or injury is caused by the negligence of the Council or its agents, servants, employees and contractors.

3.20.3 The Trust agrees that the Council will have no responsibility or liability for any loss or damage to the Trust's fixtures or fittings or personal property.

3.20.4 The Council is not responsible for any costs or loss suffered by the Trust arising from any malfunction of or interruption to:-

3.20.4.1 water, gas or electricity services;

3.20.4.2 air conditioning equipment;

3.20.4.3 fire equipment;

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3.20.4.4 any other plant, machinery or services; or

3.20.4.5 the blockage of any gutters, pipes or drains.

3.21 **Annual Reports**

The Trust will produce to the Council on an annual basis an annual report and business plan identifying the activities to be conducted from the premises as well as the anticipated income and expenditure during the ensuing twelve month period.

4. COUNCIL'S COVENANT - QUIET POSSESSION

The Council agrees with the Trust that while the Trust pays the rent and observes the terms and restrictions, which are to be observed by the Trust, then the Trust may enjoy quiet possession of the Premises during the Term of this Lease and without interruption or disturbance from or by the Council or any other person lawfully claiming through or under the Council.

5. MUTUAL COVENANTS

The Council and the Trust mutually agree as follows:

5.1 **Ownership of Improvements**

5.1.1 Unless the Trust obtains the Council's written acknowledgement, then, irrespective of whether the Council or the Trust purchased them, all structures, improvements, fixtures and fittings located on the Premises at any time during the term will become the property of, and belong to the Council.

5.2 **Property Insurance**

5.2.1 That the Trust will take out and maintain an insurance policy in the joint names of the Council and the Trust in respect of the Premises covering such damage for which a prudent Operator would insure and for the full reinstatement value.

5.2.2 If the Trust does not take out and maintain or allows the insurance policy to lapse then the Council will, and the Council will be entitled to recover the premium from the Trust.

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5.3 **Default**

If:

5.3.1 the Trust fails to pay the rent or any other money which is due to the Council for a period of 14 days from the due date for payment; or

5.3.2 the Trust commits any breach of this Lease which, is either not capable of being completely put right, or is not put right within fourteen (14) days from the date of the Council's notice to the Trust, identifying the breach and requiring it to be put right;

then, the Council will be entitled to terminate this Lease and may enter into possession of the Premises. The right to terminate the Lease and enter into possession will not reduce the Council's rights to take any other action for any of the Trust's previous breaches.

5.4 **Default Interest**

5.4.1 The Council will be entitled to charge the Trust interest at the rate which would be charged by the Council's bank on the Council's overdraft accounts plus 2 per centum per annum.

5.4.2 Interest will accrue on any moneys due but unpaid by the Trust, calculated from the due date for payment until the money has been paid in full.

5.5 **Termination or Reduction of Rent after Damage**

If the whole or any part of the Premises is destroyed or damaged thus making them substantially unfit for the Trust's use and occupation or so that the Trust is deprived of substantial use of the Premises then:

5.5.1 The rent and other payments due under this Lease, or a proportionate part of them, will be reduced. The reduction will depend upon the nature and extent of the damage sustained and will continue until the Premises is rebuilt, reinstated or made fit for the Trust's occupation and use or until the Lease is terminated in accordance with the provisions of this clause;

5.5.2 Where there is any dispute about the amount by which the rent or other payments should be reduced then either party may instruct an independent Licensed Valuer to determine the amount of the

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reduction. The Licensed Valuer's costs will be shared equally by the parties;

5.5.3 If after six (6) months the Premises has not been substantially reinstated this Lease may be terminated by either party by notice in writing to the other;

5.5.4 Any such termination will not reduce the rights of either party in respect of any previous breaches of this Lease;

5.6 **Loans to Trust**

If the Council at any time during the currency of this Lease or during any period of holding over lends or advances any money to the Trust, or offers a guarantee for any money lent or advanced to the Trust, then it is agreed that any loan moneys including principal and/or interest due by the Trust to the Council will be deemed to be rental due hereunder and any other duties and obligations of the Trust in relation to such loan or guarantee will be deemed to be duties and obligations under this Lease. In the case of any breach or default of such duties or obligations the provisions of clause 6.4 of this Lease will apply as if such breach or default were a breach or default of this Lease.

5.7 **Resumption**

5.7.1 If after the Council receives notice of any proposed resumption or acquisition of the Premises by any Government (whether Federal or State) or other authority, or if the control of the Premises is otherwise taken away from the Council, the Council will be entitled to terminate this Lease and neither party will be permitted to bring any claim or action against the other except for any previous breaches of this Lease.

5.7.2 The Council will use its best endeavours to obtain compensation from any Government whether Federal or State.

5.8 **Renewal**

5.8.1 The Trust will be entitled to an extension of this Lease for each of the periods (if any) set out in Item 9 of the Schedule provided that:

5.8.1.1 the Trust gives the Council a written notice of its desire to be granted the extension, not less than three (3) and not more than six (6) months before the expiration of the current Term of the Lease;

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5.8.1.2 the Trust is not in breach of the Lease either at the time the notice is given or any time up to the expiry of the current term of the Lease; and

5.8.1.3 the Trust has not committed any frequent and/or substantial breaches of the Lease during the current term or any previous term of the Lease.

5.8.2 Each extended term will be on the same terms and conditions as this Lease or such other terms as the parties may agree but will exclude the right to a renewal just exercised.

5.8.3 The rent payable from the commencement of the renewed term will be calculated in the same manner as set out in clause 3.1 of this Lease.

5.9 **Holding Over**

If the Trust continues to occupy the Premises after the expiry of the term, or after the Lease is terminated then the Trust will be a monthly tenant occupying the Premises on the terms and conditions contained in this Lease.

5.10 **Waiver**

The failure or omission by the Council to take any action for breach of any of the terms of this Lease will not stop the Council from taking action in relation to any other breaches of the same or any other term or condition of the Lease.

5.11 **Notice**

Any notice which is required to be given by either party must be in writing and must be delivered to the other party at the address which appears in the Schedule or other place previously nominated. Notices to the Council must be addressed to the Chief Executive Officer.

5.12 **Obligations**

Where the Trust is made up of two or more persons, then the liability of those persons for the performance and observation of the terms, covenants, conditions and agreements of this Lease will be joint and several.

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5.13 **Severance**

If any term of this Lease is invalid, unlawful or not applicable, then it will be deleted from the Lease without affecting any other of the parties' obligations under this Lease.

5.14 **Entire Agreement**

The terms contained in this Lease comprise the whole of the agreement between the parties. It is expressly agreed and declared by the parties that no further or other terms exist between the parties with respect to the Premises or the Lease.

5.15 **No Warranty**

The Trust specifically acknowledges that before signing this Lease it was given no warranty in respect of the suitability of the Premises (whether structural or otherwise) for the use by the Trust, nor was any warranty given in respect of the fittings, fixtures, facilities and amenities contained on the Premises.

5.16 **Conditional Lease**

This Lease is subject to the Council obtaining any necessary approvals or consents, including but not limited to:

5.16.1 a resolution in favour of the grant of this lease at a meeting of electors of the Council held in accordance with Section 457(4) of the Local Government Act 1934;

5.16.2 the consent of the Minister in accordance with Section 457(2) of the Local Government Act 1934; and

5.16.3 any consent required by the Development Act.

5.17 **Disclosure Statement**

Immediately before the Trust signed this Lease it was given a Disclosure Statement which is annexed to the Lease for signing.

5.18 **Costs**

5.18.1 The Trust shall pay the stamp duty assessed on the Lease.

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5.18.2 The Trust shall pay half of the Council's reasonable costs incurred in preparing this Lease.

5.18.3 The Trust shall pay all the Concil's costs as a result of any threatened or actual breach of the Lease by the Trust.

5.19 **Goods and Services Tax**

5.19.1 If a GST is imposed by law then the amount payable for any Supply made under or in accordance with this Lease immediately prior to the GST introduction Date shall be increased by the GST imposed on or in respect of that Supply.

5.19.2 If:

5.19.2.1 GST is imposed by law; and

5.19.2.2 after the GST Introduction Date the rate at which GST is imposed increases

then the amount payable for any Supply made under or in accordance with this Lease shall be further increased by the amount by which GST imposed on or in respect of that Supply is increased.

5.19.3 For the purposes of this clause 5.19:

5.19.3.1 "GST" means any goods and/or services tax, value added tax or other government tax or impost, whether Federal, State or Local ("GST");

5.19.3.2 "GST Introduction Date" means the date on which GST is imposed by law in Australia; and

5.19.3.3 "Supply" means taxable supplies as defined in or under and Act imposing a GST.

5.19.4 Any subsequent review of rental hereunder will apply and take effect as provided hereunder, and on the basis of the rental as increased by the GST.

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5.20 **Interpretation**

In this Lease -

5.20.1 Reference to any legislation includes subordinate legislation, and all amending or substituting legislation;

5.20.2 Words in the singular are capable of including the plural and vice versa, and words importing one gender are to be read as including the other genders where appropriate;

5.20.3 Any reference to a natural person will also apply to a body corporate and vice versa;

5.20.4 Headings are for convenience of reference only and do not affect the construction or interpretation of this lease;

5.20.5 Any reference to the Term of this lease includes any extension of it;

5.20.6 All moneys payable by the Trust to the Council under this Lease will be recoverable as a debt or at the Council's option in the same manner as rent in arrears;

5.20.7 The terms, covenants, conditions and agreements in this leas are in addition to and without prejudice to those implied by the Real Property Act, 1886 and the Law of Property Act, 1936 except insofar as they are altered or modified in the Lease;

5.20.8 The "Council" includes its servants, agents and workers;

5.20.9 The "Premises" includes all the structures, improvements, fixtures and fittings located on the Premises at the Commencement Date.

The parties acknowledge the preceding clauses by their execution of this Lease.

THE COMMON SEAL of)
CITY OF MOUNT GAMBIER)
was affixed to give effect to a)
resolution of the Council, in the)
presence of:)

CITY OF MOUNT GAMBIER COMMON SEAL

F. McDonnell

..... Mayor

..... Chief Executive Officer

[231715\ekd0014]

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THE COMMON SEAL of)
QUEEN ELIZABETH PARK)
TRUST INCORPORATED was)
affixed in the presence of:)

QUEEN ELIZABETH PARK TRUST INCORPORATED
COMMON SEAL

..... Sealholder

..... Sealholder

[231715\ekd0014]

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LEASE SCHEDULE

ITEM 1 The Council	**CORPORATION OF THE CITY OF MOUNT GAMBIER** of 10 Watson Terrace Mount Gambier 5290
ITEM 2 The Trust (Names and addresses)	**QUEEN ELIZABETH PARK TRUST INCORPORATED** of PO Box 773 Mount Gambier 5290
ITEM 3 The Term	Ten (10) years
ITEM 4 The Commencement Date	1 July, 1999
ITEM 5 The Rent and Time of Payment	**TWO HUNDRED DOLLARS** ($200.00) per annum payable yearly in advance on the Commencement Date and on every anniversary of the Commencement Date thereafter.
ITEM 6 Use of Premises	Golf course
ITEM 7 Date the Lease is made	The 10th day of November 1999.
ITEM 8 The Premises	The Premises marked Area B on the plan annexed hereto as Annexure A, being portions of the Premises contained in Sections 241 and 242 in the Hundred of Blanche.
ITEM 9 Period of Extension	Ten (10) years

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SCHEDULE 1

Disclosure Statement - regulation 5

DISCLOSURE STATEMENT UNDER SECTION 12 OF RETAIL AND COMMERCIAL LEASES ACT 1995

INFORMATION FOR LESSEES

Please read the following information carefully.

What is a lease?
A lease is a very important document. It is a legally binding contract between the lessor (landlord) and the lessee (tenant). It sets out the rights and obligations of the lessor and the lessee.

A document that binds the lessee to enter into a lease or to take a shop on lease for a renewed term should be treated as if it were the lease.

What should I look for in a lease?
The main features to consider are:-

- the term of the lease;
- whether there is an option to renew or extend the lease (and the method of exercising any such option);
- the rent and the basis for rent reviews;
- the amounts that the lessee will have to pay in addition to rent *eg* fit out costs, maintenance and repair costs and shared operating expenses;
- the consequences of breaching a term of the lease.

Make sure you read the whole document and understand the obligations it will place on you, especially the extra charges in addition to rent that you will have to pay.

What information is the lessor required to give me?
The lessor must give you a copy of the proposed lease and this disclosure statement. The disclosure statement must contain the matters set out in section 12 of the *Retail and Commercial Leases Act 1995.*

What should I do before signing a lease or other binding document?
Do not sign until you understand exactly what your obligations under the lease will be.

Before signing a lease or other binding document, you should obtain independent legal and financial advice.

- You should discuss the lease (or any agreement for lease) and the disclosure statement with your own lawyer or leasing adviser.

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- You should seek advice about the financial commitments under the lease from your own accountant or recognised financial or business adviser.
- You should also seek advice from an association representing the interests of lessees.

Before signing a lease or other binding document, oral representations made by the lessor or the lessor's agent on which you have relied should be reduced to writing and signed by or on behalf of the lessor.

Before signing a lease or other binding document, the lessee should sign an acknowledgment of receipt of the disclosure statement.

ACKNOWLEDGMENT OF RECEIPT OF DISCLOSURE STATEMENT

I received a disclosure statement under section 12 of the *Retail and Commercial Leases Act 1995*

on 28th SEPTEMBER, 1999 *[date]*

from City of Mount Gambier

Date 15th NOVEMBER, 1999

Lessee:

Queen Elizabeth Park Trust Inc
of PO Box 773
Mount Gambier 5290

M. R. Lewis *[signature]*

[231715\ekd0015]

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DISCLOSURE STATEMENT

Shop Details

1. Shop to be leased:

   Queen Elizabeth Park Golf Course

   .....

   [address and shop number]

2. Lettable area of shop: 24 hectares

3. The shop may be used only for the following purposes:

   Golf Course

   .....

   .....

4. *[tick one box]*

   ☐ The shop is in a retail shopping centre within the meaning of the *Retail and Commercial Leases Act 1995*. See Appendix B for details.

   ☒ The shop is not in a retail shopping centre within the meaning of the *Retail and Commercial Leases Act 1995*.

Lessor details

5. *[tick one box and fill in details if required]*

   ☒ The lessor is the owner of the shop.

   ☐ The lessor leases the shop. The following rights and obligations of the lessor under the lessor's lease are relevant to the proposed lease:

   .....

   .....

   .....

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Term of lease and renewal or extension

NOTE: Part 4A of the *Retail and Commercial Leases Act 1995* contains provisions that govern the term and renewal of certain leases. In some circumstances, Division 3 of Part 4A provides a preferential right of renewal of a lease of a shop in a shopping centre entered into on or after 6 October 1997.

6. Term of lease: **1 July 1999** to **30 June 2009**

7. *[tick one box and fill in details if required]*

   ☐ There is no right to renew or extend the term of the lease.

   ☒ The lessee has a right to renew or extend the term of the lease as follows:

   One right of renewal of ten years

   .....

   .....

Lessee's access to shop

8. The lessee will have access to the shop during the following hours that fall outside trading hours:

   No trading hours .....

9. The shop will be available for occupation by the lessee on:

   In occupation .....

Legal consequences of breach of the Term

10. The legal consequences of breach of a term of the lease are set out in the following clauses of the lease:

    5.3 .....

    The consequences of early termination of the lease by the lessee are as follows:

    See clause **5.3** .....

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. . . . . .

. . . . . .

The consequences of other breaches are as follows:

Interest and costs may be charged. Failure to remedy the breach may incur debts to the Lessor. . . . . . .

. . . . . .

. . . . . .

[give brief descriptions]

Monetary obligations of lessee

11. The lessee's obligations to pay rent, capital expenditure, outgoings and other monetary amounts are set out in Appendix A.

Date: 15th NOVEMBER 1999

Lessor: F. McDonnell.

[231715\ekd0015]

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APPENDIX A: MONETARY OBLIGATIONS OF LESSEE

PART 1 - RENT

1. The base rent payable for the shop under the lease is:

   $200.00 per annum payable annually in advance

   [if a formula is used to calculate rent, insert the formula]

2. The base rent may be changed on the following basis:

   Market rent reviews five yearly

   .....

   .....

   [insert description of rent review arrangements]

3. The following rent calculated on the following basis is also payable under the lease:

   .....

PART 2 - CAPITAL EXPENDITURE

[tick the appropriate box or boxes and include relevant attachments as required]

The lessee will be liable for the following kinds of capital expenditures:

☒ making good damage to the premises arising when the lessee is in possession or entitled to possession of the premises;

☐ fitting or refitting the shop - see attachment marked " ..... " for details *[sufficient details to enable the lessee to obtain an estimate of the likely cost of complying with the obligation must be disclosed]*;

☐ providing fixtures, plant or equipment - see attachment marked " ... " for details *[sufficient details to enable the lessee to obtain an estimate of the likely cost of complying with the obligation must be disclosed]*;

☐ contributions to a sinking fund to cover major items of repair or maintenance - see attachment marked " ... " *[reasonable details of the lessee's obligations must be disclosed]*.

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PART 3 - OUTGOINGS

1. The lessee will be liable to pay or reimburse the following categories of outgoings:

Category of outgoings	**Estimate of lessee's annual liability**
local government rates and charges	$ per year
electricity	$ per year
gas and oil	$ per year
water and sewerage rates and charges	$ per year
sewerage disposal and sullage	$ per year
energy management systems	$ per year
air conditioning/ventilation	$ per year
building intelligence and emergency systems	$ per year
fire protection	$ per year
security	$ per year
lifts and escalators	$ per year
public address/music	$ per year
signs	$ per year
public telephones	$ per year
insurance	$ per year
pest control	$ per year
uniforms	$ per year
car parking	$ per year
child minding	$ per year
gardening	$ per year
cleaning	$ per year
audit fees	$ per year
management costs	$ per year
maintenance and repairs	$ per year
other *[specify]*	$ per year
No outgoings other than utilities (dependant on Trust's usage and consumption)	$ per year
.....	$ per year

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2. *[tick one box and fill in details if required]*

☒ The lessee is liable for the full amount of the outgoings.

☐ The lessee is liable for a proportion of the outgoings calculated according to the following formula:

All utilities are payable (eg telephone, electricity) .....

.....

.....

3. *[tick one box and fill in details if required]*

☒ The amount the lessee is required to pay towards outgoings does not include a margin of profit for the lessor.

☐ The amount the lessee is required to pay towards outgoings includes a margin of profit for the lessor as follows:

.....

.....

[the percentage profit or the basis on which the profit is to be calculated must be disclosed]

PART 4 - OTHER MONETARY OBLIGATIONS

[tick one box and fill in details if required]

☐ The lessee will not be liable for any other kinds of monetary obligations.

☒ The lessee will also be liable for the following kinds of monetary obligations:

Interest on any arrears or unpaid money due under the lease, legal costs for lease preparation, costs of unremedied damage .....

.....

[the lessor must provide, if possible, an estimate of the annual cost of complying with those obligations]

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SCHEDULE 3

EXCLUSION OF WARRANTY OF FITNESS FOR PURPOSE

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.

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A10. L11

AR13/4860

DEED OF EXTENSION AND VARIATION OF LEASE

Golf Course Land

CITY OF MOUNT GAMBIER

and

QUEEN ELIZABETH PARK TRUST INCORPORATED

Norman Waterhouse
LAWYERS

Level 15, 45 Pirie Street
Adelaide SA 5000
Telephone + 61 8 8210 1200
Fax + 61 8 8210 1234
www.normans.com.au

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DATE 11 may 2009

PARTIES

CITY OF MOUNT GAMBIER of 10 Watson Terrace, Mount Gambier SA 5290 (**Council**)

QUEEN ELIZABETH PARK TRUST INCORPORATED of PO Box 68, Mount Gambier SA 5290 (**Lessee**)

BACKGROUND

A. The Council leased the Premises to the Lessee upon and subject to the terms and conditions in the Lease.

B. The Lessee has requested the Council vary the terms of the Lease and grant to the Lessee an extension of the Lease for the Renewed Term.

C. The Council has agreed to vary the terms of the Lease and grant the Lessee an extension of the Lease for the Renewed Term as set out in this deed.

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~~Orig~~/Copy 1 of/~~with~~ 1 copies
Consideration/Value/Security: $ 0.00
SA Proportion (if applicable): $ 0.00
SD: $ 0.00 LTO Fees: $ 0.00
Int: $ 0.00 Pen/Add Tax: $ 0.00
Signature: [signature] Date: 21/05/09

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this document, unless the context otherwise requires:

Effective Date means the date described in Item 1 of the Schedule.

Lease means the memorandum of lease described in Item 2 of the Schedule.

Premises means the premises described in Item 3 of the Schedule.

Renewed Term means the term described in Item 4 of the Schedule.

Schedule means the schedule to this deed.

1.2 General

In this document, unless the context otherwise requires:

1.2.1 a reference to any document is a reference to that document as varied, novated or replaced from time to time;

1.2.2 the singular includes the plural and vice versa;

1.2.3 a reference to a gender includes all genders;

1.2.4 the use of the word "including" does not limit what else might be included;

1.2.5 a reference to a thing includes all or any part of it;

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1.2.6 where a word or phrase is defined, its other grammatical forms have a corresponding meaning;

1.2.7 a reference to a person or entity includes a natural person, a partnership, corporation, trust, association, unincorporated body, authority or other entity;

1.2.8 a reference to a party includes that party's legal personal representatives, successors and permitted assigns;

1.2.9 a term which purports to bind or benefit two or more persons binds or benefits them jointly and severally;

1.2.10 headings are inserted in this document for convenience only and are not intended to affect its interpretation; and

1.2.11 a reference to a statute, ordinance, code or other law includes regulations and other instruments issued under it and consolidations, amendments, re-enactments or replacements of any of them.

2. EXTENSION OF LEASE

2.1 Subject to clause 3 of this deed, the Lease is hereby extended for the Renewed Term upon the same terms and conditions as are expressed or implied in the Lease.

2.2 The rental payable by the Lessee from the Effective Date is the Declared Figure per annum specified in Council's Lease Fee Policy R210 (exclusive of GST) (subject to review).

3. VARIATION OF LEASE

The terms and conditions of the Lease are amended as set out in Item 5 of the Schedule with effect from the Effective Date and in all other respects the terms and conditions of the Lease (as amended) shall remain in full force and effect in their entirety.

4. COSTS

The Council and the Lessee will pay one half of the costs of and incidental to the negotiation, preparation and execution of this deed.

5. GOVERNING LAW

This document will be governed by the laws of South Australia. The parties submit to the jurisdiction of the courts of South Australia and agree to issue any proceedings relating to this document in those courts.

6. SEVERANCE

Every provision of this document is independent of the other. Any provision which is prohibited or unenforceable in any jurisdiction will be ineffective to the extent only of such prohibition or unenforceability, and the other provisions will remain in force.

7. ASSIGNMENT

No party may assign or transfer any rights or obligations under this document without the written consent of each of the other parties.

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EXECUTED as a deed

COUNCIL

THE COMMON SEAL of **CITY OF MOUNT GAMBIER** was hereunto affixed the 11th day of MAY 2009:)

.....
Mayor

.....
Chief Executive Officer

CITY OF MOUNT GAMBIER
COMMON SEAL

LESSEE

THE COMMON SEAL of **QUEEN ELIZABETH PARK TRUST INCORPORATED** was affixed in accordance with its Constitution and by the authority of its directors:)

.....
Director

.....
Director/Secretary

QUEEN ELIZABETH PARK TRUST INCORPORATED
COMMON SEAL

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SCHEDULE

Item 1	Effective date	1 July 2009
Item 2	Lease	Lease between the Council and the Lessee dated 10 November 1999 for a term of ten (10) years commencing on 1 July 1999 and expiring on 30 June 2009 together with one (1) right of renewal of ten (10) years
Item 3	Premises	The premises described in Item 8 of the Schedule to the Lease and marked on the plan attached to the Lease
Item 4	Renewed Term	A term of ten (10) years commencing on 1 July 2009 and expiring on 30 June 2019
Item 5	Variations	1. The wording in Clause 3.1 of the Lease is deleted and replaced with the following wording: **"3.1 Rent and Rent Review** 3.1.1 The Lessee must pay the rent described in Item 5 of the Schedule. 3.1.2 The Lessee acknowledges that the rent will be reviewed annually in accordance with the Council's Lease Fee Policy R210." 2. The wording in Item 5 of the Schedule to the Lease is deleted and replaced with the following wording: "The Declared Figure per annum specified in Council's Lease Fee Policy R210 (exclusive of GST) (subject to review pursuant to clause 3.1.2)"

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R210 RESERVES, GROUNDS, PARKLANDS - Lease Term and Lease Fee (Declared Figure)

1. Policy Provisions

Where Council proposes to grant a lease of any portion of a Council reserve, ornamental ground or parklands to community based not for profit organisations pursuant to the provisions of the Local Government Act, then the conditions under which any lease is granted should include:

(a) Lease Term:

preferred term should not exceed ten (10) years;

(b) Lease Fee:

is the "declared" figure per annum plus GST

the "declared" figure is the annual lease fee that Council resolves at the commencement of each financial year.

all subsequent years of the lease then the "declared" annual fee be increased (or decreased) by the overall percentage rate increase (or decrease) that Council adopts for each financial year on a compounding calculation plus GST.

(c) Public Liability Insurance:

minimum sum of $10,000,000.

(d) Rounding Down:

in applying part (b) of this Policy i.e. the compounding use of the overall percentage rate increase (or decrease) to the annual lease fee then the resultant calculation be rounded down to the nearest whole "five dollars".

(e) Commencement:

this Policy commenced as from 1st September 2002.

2. Annual Review of 'Declared' Figure

In terms of part (b) - Lease Fee of Policy R210, the declared lease fee be $290 (plus GST) for the 2008/09 financial year, calculated as follows:

$275 + 6.5% = $290 (+GST)

Adopted by Council: 18th February 1999	Amended: 20th August 2002	Amended: 17th September 2002
Reviewed: 15th April 2003	Reviewed: 23rd July 2003	Amended: 19th August 2003
Amended: 17th August 2004	Amended: 16th August 2005	Amended: 19th September 2006
Amended: 21st August, 2007	Amended: 19th August, 2008	

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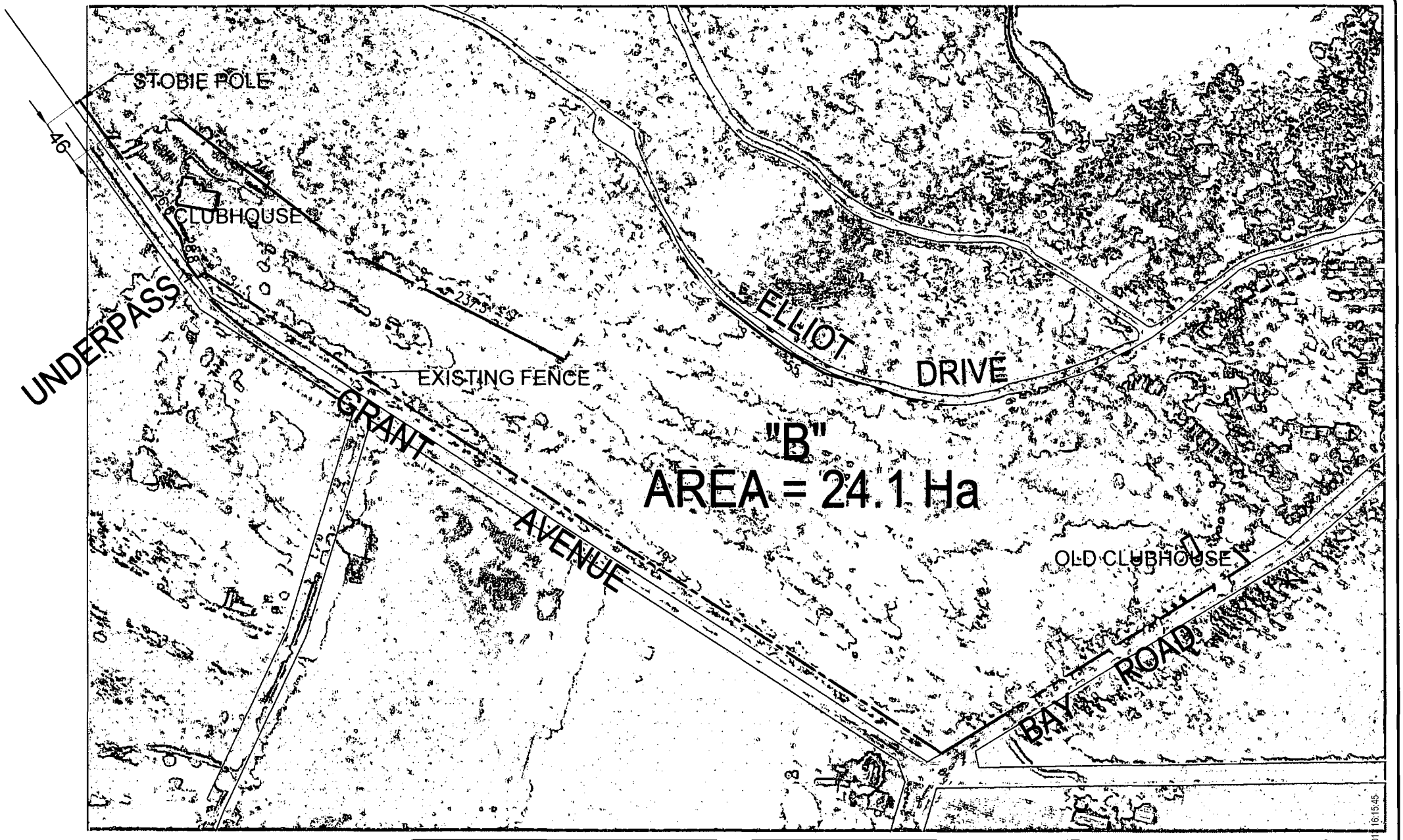

City of Mount Gambier — BLUE LAKE CITY		Approved by	
		Co-ordinates	
		Height Datum	
		Level book	
Drawn by	MS FEB 2009	CAD ref	AUTOCAD 0809-40
Designed by	MS FEB 2009	Survey ref	

CITY OF MOUNT GAMBIER

BLUE LAKE GOLF CLUB

LEASE PLAN

Scale	Sheet No
1:2000	1 OF 1
Plan No	
0809-40	

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DISCLOSURE STATEMENT

Premises: Land at Golf Course, Mount Gambier

LESSEE: QUEEN ELIZABETH PARK TRUST

Norman Waterhouse
LAWYERS

Level 15, 45 Pirie Street
Adelaide SA 5000
Telephone + 61 8 8210 1200
Fax + 61 8 8210 1234
www.normans.com.au

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SCHEDULE 1

Disclosure Statement - regulation 5

DISCLOSURE STATEMENT UNDER SECTION 12 OF RETAIL AND COMMERCIAL LEASES ACT 1995

INFORMATION FOR LESSEES

Please read the following information carefully.

What is a lease?
A lease is a very important document. It is a legally binding contract between the lessor (landlord) and the lessee (tenant). It sets out the rights and obligations of the lessor and the lessee.

A document that binds the lessee to enter into a lease or to take a shop on lease for a renewed term should be treated as if it were the lease.

What should I look for in a lease?
The main features to consider are:-

- the term of the lease;
- whether there is an option to renew or extend the lease (and the method of exercising any such option);
- the rent and the basis for rent reviews;
- the amounts that the lessee will have to pay in addition to rent *eg* fit out costs, maintenance and repair costs and shared operating expenses;
- the consequences of breaching a term of the lease.

Make sure you read the whole document and understand the obligations it will place on you, especially the extra charges in addition to rent that you will have to pay.

What information is the lessor required to give me?
The lessor must give you a copy of the proposed lease and this disclosure statement. The disclosure statement must contain the matters set out in section 12 of the *Retail and Commercial Leases Act 1995.*

What should I do before signing a lease or other binding document?
Do not sign until you understand exactly what your obligations under the lease will be.

Before signing a lease or other binding document, you should obtain independent legal and financial advice.

- You should discuss the lease (or any agreement for lease) and the disclosure statement with your own lawyer or leasing adviser.
- You should seek advice about the financial commitments under the lease from your own accountant or recognised financial or business adviser.
- You should also seek advice from an association representing the interests of lessees.

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Before signing a lease or other binding document, oral representations made by the lessor or the lessor's agent on which you have relied should be reduced to writing and signed by or on behalf of the lessor.

Before signing a lease or other binding document, the lessee should sign an acknowledgment of receipt of the disclosure statement.

ACKNOWLEDGMENT OF RECEIPT OF DISCLOSURE STATEMENT

I received a disclosure statement under section 12 of the *Retail and Commercial Leases Act 1995*

on 11TH DAY OF MAY 2009

from **City of Mount Gambier**

relating to **land at Golf Course, Mount Gambier, being the land identified on the plan attached to the Lease**

Date 11/5/09

Lessee:

Queen Elizabeth Park Trust

PO Box ~~773~~ 68, Mount Gambier SA 5290

..... *[signature]*

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DISCLOSURE STATEMENT

Shop Details

1. Shop to be leased:

   Land at Golf Course, Mount Gambier

2. Lettable area of shop: **24.10 ha**

3. The shop may be used only for the following purposes:

   Golf Course

4. ☐ The shop is in a retail shopping centre within the meaning of the *Retail and Commercial Leases Act 1995*. See Appendix B for details.

   ☑ The shop is not in a retail shopping centre within the meaning of the *Retail and Commercial Leases Act 1995*.

Lessor details

5. ☑ The lessor is the owner of the shop.

   ☐ The lessor leases the shop. The following rights and obligations of the lessor under the lessor's lease are relevant to the proposed lease:

   The Lessor has the care, control and management of the shop

Term of lease and renewal or extension

NOTE: Part 4A of the *Retail and Commercial Leases Act 1995* contains provisions that govern the term and renewal of certain leases. In some circumstances, Division 3 of Part 4A provides a preferential right of renewal of a lease of a shop in a shopping centre entered into on or after 6 October 1997.

6. Term of lease: **1 July 2009 to 30 June 2019**

7. ☑ There is no right to renew or extend the term of the lease.

   ☐ The lessee has a right to renew or extend the term of the lease as follows:

   .....

   .....

Lessee's access to shop

8. The lessee will have access to the shop during the following hours that fall outside trading hours:

   All hours

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9. The shop will be available for occupation by the lessee on:

Lessee already in occupation

Legal consequences of breach of lease

10. The legal consequences of breach of a term of the lease are set out in the following clauses of the lease:

Clause 5.3

The consequences of early termination of the lease by the lessee are as follows:

Depending upon the nature of the early termination by the lessee, the lessor may do one or more of the following:

(a) sue the lessee for damages, with or without accepting the termination;

(b) accept the lessee's termination and re-enter the premises (with or without claiming damages);

(c) require the lessee to pay default interest on unpaid money (including unpaid rent).

The consequences of other breaches are as follows:

In addition to the consequences relating to early termination of the lease by the lessee, the lessor may do one or more of the following (depending upon the nature of the breach):

(a) distrain for unpaid rent (i.e. enter the premises and cease and sell the lessee's goods);

(b) terminate the lease;

(c) re-enter the premises;

(d) remedy the breach itself and recover the cost of doing so from the lessee;

(e) obtain specific performance of the lessee's obligations under the lease;

(f) obtain an injunction against any breaches by the lessee.

Monetary obligations of lessee

11. The lessee's obligations to pay rent, capital expenditure, outgoings and other monetary amounts are set out in Appendix A.

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APPENDIX A: MONETARY OBLIGATIONS OF LESSEE

PART 1 - RENT

1. The base rent payable for the shop under the lease is:

   The Declared Figure per annum specified in Council's Lease Fee Policy R210 (exclusive of GST) (subject to review)

2. The base rent may be changed on the following basis:

   On the commencement date of the renewed term and on the fifth anniversary of this date in the manner agreed by the parties pursuant to clause 3.1.3 of the Lease.

3. The following rent calculated on the following basis is also payable under the lease:

   Not applicable

PART 2 - CAPITAL EXPENDITURE

[tick the appropriate box or boxes and include relevant attachments as required]

The lessee will be liable for the following kinds of capital expenditures:

☑ making good damage to the premises arising when the lessee is in possession or entitled to possession of the premises;

☐ fitting or refitting the shop;
☐ providing fixtures, plant or equipment;

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PART 3 - OUTGOINGS

1. The lessee will be liable to pay or reimburse the following categories of outgoings. *Some amounts to be raised for outgoings (including statutory charges and insurances) as at the date of this disclosure statement are presently only estimated. The full description of recoverable outgoings are set out under the terms of the lease.*

Category of outgoings	**Estimate of lessee's annual liability**
local government rates and charges	$3,800.00 per year
electricity	As consumed by the Lessee – refer to clause 3.3 of the Lease
gas and oil	As consumed by the Lessee – refer to clause 3.3 of the Lease
water and sewerage rates and charges	As consumed by the Lessee – refer to clause 3.3 of the Lease
sewerage disposal and sullage	$ per year
Energy management systems	$ per year
air conditioning/ventilation	$ per year
building intelligence and emergency systems	$ per year
fire protection	As determined by the Lessee – refer to clause 3.7 of the Lease
security	$ per year
lifts and escalators	$ per year
Public address/music	$ per year
Signs	As determined by the Lessee – refer to clause 3.10 of the Lease
Public telephones	$ per year
insurance	As determined by the Lessee – refer to clauses 3.17 and 5.2 of the Lease
pest control	As determined by the Lessee – refer to clause 3.7 of the Lease
uniforms	$ per year
car parking	$ per year

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child minding	$ per year
Gardening	As determined by the Lessee – refer to clause 3.7 of the Lease
Cleaning	As determined by the Lessee – refer to clause 3.7 of the Lease
Audit fees	$ per year
Management costs	$ per year
Maintenance and repairs	As determined by the Lessee – refer to clause 3.7 of the Lease
other *[specify]* Emergency Services Levy.....	 $600.00 per year $ per year $ per year
Total	$ 4400 per year

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2. ☑ The lessee is liable for the full amount of the outgoings.

   ☐ The lessee is liable for a proportion of the outgoings calculated according to the following formula:

   .....

   .....

3. ☑ The amount the lessee is required to pay towards outgoings does not include a margin of profit for the lessor.

   ☐ The amount the lessee is required to pay towards outgoings includes a margin of profit for the lessor as follows:

   .....

   .....

   [the percentage profit or the basis on which the profit is to be calculated must be disclosed]

PART 4 - OTHER MONETARY OBLIGATIONS

☐ The lessee will not be liable for any other kinds of monetary obligations.

☑ The lessee will also be liable for the following kinds of monetary obligations:

1. **Cost of electricity, telephone, gas and water and any and all other services and utilities consumed in the tenancy.**

2. **Goods & Services Tax – In addition to all other amounts payable by the lessee pursuant to the lease, the lessee shall pay to the lessor all goods and services taxes, value added taxes, consumption taxes or other similar taxes, duties, excises, surcharges, levies or imposts imposed, charged or levied in respect of:-**

   (a) rent paid or received pursuant to the lease;

   (b) any outgoings or other expenses incurred or paid by the lessor and which are to be reimbursed by the lessee to the lessor pursuant to the lease;

   (c) any other amount payable or to be borne by the lessee pursuant to the Lease.

3. **Insurance**

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IMPORTANT NOTICE
EXCLUSION OF WARRANTY OF FITNESS FOR PURPOSE

Retail and Commercial Leases Act 1995: Section 18
Retail and 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.

Date: 26th MARCH 2009

Lessor:

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THE CITY OF MOUNT GAMBIER
Council

-and-

QUEEN ELIZABETH PARK TRUST INC
Lessee

LEASE OF GOLF COURSE LAND

NORMAN WATERHOUSE
15th Level
45 Pirie Street
ADELAIDE SA 5000

Tele: (08) 210-1200

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CONTENTS OF LEASE

1. Acknowledge Background

2. Grant of Lease

3. Development of Golf Course

4. Lessees Covenants

4.1 Rent and Rent Review

4.2 Rates and Taxes

4.3 Utilities

4.4 Use of Land

4.5 Legislation

4.6 Alcohol

4.7 Maintenance and Repair

4.8 Entry by Council

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4.10 Signs/Floodlighting

4.11 Painting

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4.13 Offences

4.14 Assignment

4.15 Surrender

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4.19 Breach of Insurance Conditions

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6.1 Special Conditions

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6.4 Default

6.5 Default Interest

6.6 Termination or Abatement on Damage

6.7 Loans to Lessee

6.8 Resumption

6.9 Renewal

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6.11 Waiver

6.12 Notice

6.13 Obligations

6.14 Severance

6.15 Entire Agreement

6.16 No Warranty

6.17 Conditional Lease

6.18 Form 5

6.19 Costs

6.20 Interpretation

Execution

Schedule

Form 5

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THIS LEASE is made on the date appearing in Item 7 in the Schedule

BETWEEN: CITY OF MOUNT GAMBIER of 10 Watson Terrace Mount Gambier 5290 (together with its successors and assigns is called "the Council")

AND: QUEEN ELIZABETH PARK TRUST INCORPORATED of PO Box 773 Mount Gambier 5290 (together with its respective successors and assigns is called "the Lessee")

COMMISSIONER OF STAMPS

S.A. STAMP DUTY PAID $2.00
ORIGINAL STAMPED (COPY 1 OF 1)
23/06/95 11:43:28 B22500,1
ANNUAL RENTAL ($200.00)
LEASE

BACKGROUND:

1. The Council is the Registered Proprietor of the whole of the land contained in Certificate of Title Register Book Volume 4144 Folio 600, Volume 4144 Folio 601 and Volume 4144 Folio 602 ("the Land").

2. The Lessee has approached the Council with a request to lease portion of the Land being Lot 1, Lot 2 and Pt Lot 3 in FP 5701 as shown on the attached plan and marked "F" for the purpose of establishing upon it a nine hole golf course which will be integrated with the Lessee's existing nine hole golf course on adjacent land.

3. The parties wish to record the terms of their arrangements in this document.

THE PARTIES AGREE as follows:

1. The parties agree that the Background is true and forms part of this Agreement.

2. Grant of Lease

The Council grants to the Lessee, and the Lessee accepts, a lease of the Premises for the term set out in Item 3 of the Schedule, commencing on the date set out in Item 4 and subject to all the following terms.

3. Development of Golf Course

3.1 The Lessee agrees that prior to December 2005 it will complete the construction of a nine hole golf course with appropriate landscaping on the Land to a standard and design previously approved by the Council and any other statutory or government bodies, and

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ensuring that it is integrated with the existing nine hole golf course located on a site adjacent to the Land.

3.2 Commencement of the works necessary to establish the golf course must be undertaken by December 1999.

3.3 All costs associated with the construction of the golf course on the Land will be paid by the Lessee with a minimum of $350,000 to be spent on the golf course development by December 2005. The council will be entitled to receive annual audited statements of the Lessee's expenditure to verify such expense.

3.4 All work and improvements carried out by the Lessee to establish and maintain the golf course will become the property of the Council with no compensation payable to the Lessee.

4. The Lessee's Obligations

The Lessee agrees with the Council as follows:

4.1 Rent and Rent Review

4.1.1 To pay the rent set out in Item 5 of the Schedule (which may be reviewed from time to time) to the Council at the time specified in Item 5.

4.1.2 On the anniversary of the Commencement Date in the fifth year and on that same date for each year of the term thereafter the rent will be reviewed by agreement between the parties and may be increased provided that any increase is not greater than the CPI (all groups, Adelaide) over the previous 12 months or 5% whichever is the lesser amount.

4.1.3 The reviewed rent will be payable from the review date.

4.1.4 The increased rent for any year will never be lower than the rent payable in the preceding year.

4.2 Rates and Taxes

To pay, on time and in full, all rates, taxes (excluding state land tax), assessments and charges which are now, or may at some time during the Term, be charged, levied or payable by either the Council or any occupier with respect to the Land.

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4.3 Utilities

To pay all charges for telephone, electricity, gas and water including excess water consumed on the Land.

4.4 Use of Land

Not to use or allow the Land to be used for any purpose or activity other than that set out in Item 6 of the Schedule.

4.5 Legislation

To comply (at its own cost and expense in all things) with the provisions of all acts, regulations, by-laws and all directions and orders of any local government or semi-government authority in relation to the Land.

4.6 Alcohol

4.6.1 That alcohol or other prohibited substances may be sold or consumed or used on or in the vicinity of the Land only in accordance with Council's consent and at all times in accordance with the provisions of the Liquor Licensing Act.

4.6.2 That the Lessee will not be permitted to install gaming machines on the Land without first obtaining the Council's consent.

4.7 Maintenance and Repair

4.7.1 The Lessee must notify the Council as soon as it becomes aware of anything on the Land which requires repair by the Council.

4.7.2 The Lessee must keep the Land in good and tenant like repair (fair wear and tear and damage by fire, storm, tempest, act of god, war, riot, civil commotion and earthquake excepted).

4.7.3 The Lessee will supply and replace, fit or install any items which are reasonably necessary to maintain and preserve the condition of the Land and the Lessee must continue to maintain those items during the term.

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4.7.4 The Lessee must ensure that the fairways, greens and tees are well watered, grassed and tendered so as to keep them in an attractive state suitable for use as a golf course.

4.7.5 All plumbing and drainage on the Land must be maintained in good working order and be kept free from all blockages.

4.7.6 The Lessee will install and maintain fire fighting equipment at the Land to a level acceptable to the Council or the local fire fighting authority.

4.7.7 The Lessee must keep the Land in a clean and sanitary condition, free from dirt, rubbish and vermin.

4.7.8 The obligations imposed upon the Lessee in this clause are to be carried out at the Lessee's cost.

4.8 Entry by Council

4.8.1 Provided that the Lessee is given reasonable notice, the Lessee will allow the Council to come onto the Land for the purpose of inspecting its condition and state of repair.

4.8.2 If the Council finds that any part of the Land needs repairing and for which the Lessee is responsible, then the Council may notify the Lessee.

4.8.3 If the Lessee has not carried out the work required by the notice, to a reasonably acceptable standard, within the time set out in the notice, which unless in the case of an emergency will not be less than one month, then the Council may come onto the Land at a reasonable hour to carry out the repairs. The cost of the repairs and any other reasonable expenses incurred by the Council will be recoverable from the Lessee.

4.9 Erection/Demolition of Buildings

Unless with the Council's previously granted written consent, the Lessee will not make any structural changes to the Land such as erecting or demolishing any buildings, or other structures. Any approved alterations to the buildings must be carried out in accordance with all planning and building approvals.

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4.10 Signs/Floodlighting

4.10.1 The Lessee must not put up, attach or erect any signs on the Land unless it has received the Council's prior written consent.

4.10.2 The Lessee may not without the Council's prior written consent install or erect any floodlighting.

4.11 Painting

4.11.1 Upon Council's reasonable written request, the Lessee will paint or otherwise treat all parts of any buildings or structures on the Land which had been painted or treated on the Commencement Date, or during the term of the Lease. The Lessee will use good quality materials and provide coverage of at least two coats.

4.11.2 The Lessee should attempt to comply with the Council's recommendations in relation to the colour scheme. The Lessee will be responsible for the costs of complying with this clause 4.11.

4.12 Offensive Activities

The Lessee will not create a nuisance or disturbance either for the Council or for the occupiers of adjoining lands, nor will it carry on any offensive or dangerous trade or business from the Land.

4.13 Offences

The Lessee will not carry on any activity or do anything or fail to do something which is or may become an offence under any act or regulation or by-law.

4.14 Assignment

4.14.1 The Lessee is not permitted to transfer, assign, sublet or otherwise give up possession of the Land unless it has received the Council's written consent. The Council agrees that it will not unreasonably withhold its consent.

4.14.2 The Lessee will be responsible to satisfy the Council that any proposed new Lessee will be a suitable body to lease the Land.

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4.15 Surrender

4.15.1 Upon the expiration or earlier determination of the Term, the Lessee will peacefully and quietly surrender and give up possession of the Land.

4.15.2 The Lessee will leave the Land in good order and cleanliness.

4.15.3 The Council may request the Lessee to remove all the Lessee's fixtures and fittings and in doing so cause no damage to the Land. The Lessee will be responsible for repairing at its own cost any damage caused in removing its fixtures and fittings.

4.15.4 Any reasonable costs incurred by the Council in repairing any damage caused by the Lessee in surrendering the Land may be recovered from the Lessee.

4.16 Indemnification

The Lessee will indemnify and hold harmless the Council from and against all actions, claims, demands, losses, damages, costs and expenses for which the Council is or may be, or becomes liable in respect of or arising from:

4.16.1 The negligent use, misuse, waste or abuse by the Lessee of the water, gas, electricity, oil and other services and facilities of the Land;

4.16.2 Overflow or leakage or escape of water (including rain water) fire, gas, electricity, or other harmful agent in or from the Land, but having origin within the Land, or caused or contributed to by any act or omission by the Lessee;

4.16.3 Loss, damage or injury from any cause whatsoever to property, or persons, caused or contributed to by the use of the Land by the Lessee;

4.16.4 Loss, damage or injury from any cause whatsoever to property or persons inside or outside the Land caused or contributed to by the neglect or default of the Lessee; or

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4.16.5 Loss, damage or injury from any cause whatsoever to property or persons inside or outside the Land caused or contributed to by the Lessee's neglect or default to observe or perform any of the covenants, conditions, regulations and restrictions required to be complied with or adhered to by the Lessee in accordance with this Lease.

In this clause the term "the Lessee" will include the Lessee's servants, agents, customers, contractors or other persons claiming through or under the Lessee.

4.17 Public Liability Insurance

4.17.1 The Lessee will take out and during the term continue to maintain a public risk insurance policy.

4.17.2 The policy will be in respect of injury, loss or damage occurring on the Land and it will note the Council's rights and interest as Lessor and also the indemnities provided by the Lessee in favour of the Council.

4.17.3 The cover will be for a minimum amount of TWENTY MILLION DOLLARS ($20,000,000.00) per claim or any other amount which the Council negotiates with the Lessee.

4.17.4 The policy will bear an endorsement from the insurer that the insurer will notify the Council if the policy is allowed to lapse or is otherwise cancelled.

4.17.5 On the Commencement Date and on the anniversary of that date during the Term the Lessee must provide Council with a copy of the Policy and receipt for payment of the premium.

4.18 Contents Insurance

The Lessee must obtain insurance for its own contents which are located on the Land.

4.19 Breach of Insurance Conditions

The Lessee and the Council are not to do anything or fail to do something which has the affect of voiding the insurance policy or increasing the rate of premium.

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4.20 Release

4.20.1 The Lessee agrees to occupy, use and keep the Land at the Lessee's risk.

4.20.2 The Lessee agrees to release the Council and its agents, servants, employees and contractors from all claims and demands of every kind resulting from any accident, damage or injury occurring on the Land except if such accident damage or injury is caused by the negligence of the Council or its agents, servants, employees and contractors.

4.20.3 The Lessee agrees that the Council will have no responsibility or liability for any loss or damage to the Lessee's fixtures or fittings or personal property.

5. Council's Covenant - Quiet Possession

The Council agrees with the Lessee that while the Lessee pays the rent and observes the terms and restrictions, which are to be observed by the Lessee, then the Lessee may enjoy quiet possession of the Land during the Term of this Lease and without interruption or disturbance from or by the Council or any other person lawfully claiming through or under the Council.

6. Mutual Covenants

The Council and the Lessee mutually agree as follows:

6.1 Special Conditions

6.1.1 To comply with any special conditions that are set out in Item 10 of the Schedule.

6.1.2 Where any special conditions are inconsistent with the other terms and conditions of this Lease then the special conditions will take precedence to the extent of the inconsistency.

6.2 Ownership of Improvements

6.2.1 Unless the Lessee obtains the Council's written acknowledgment, then, irrespective of whether the Council or the Lessee purchased them, all structures, improvements, fixtures and fittings located on the Land

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at any time during the term will become the property of, and belong to the Council.

6.3 Property Insurance

6.3.1 That the Lessee will take out and maintain an insurance policy in the joint names of the Council and the Lessee in respect of the Land covering such damage for which a prudent Operator would insure and for the full reinstatement value.

6.3.2 If the Lessee does not take out and maintain or allows the insurance policy to lapse then the Council will, and the Council will be entitled to recover the premium from the Lessee.

6.4 Default

If:

6.4.1 the Lessee fails to pay the rent or any other money which is due to the Council for a period of 14 days from the due date for payment; or

6.4.2 the Lessee commits any breach of this Lease which, is either not capable of being completely put right, or is not put right within fourteen (14) days from the date of the Council's notice to the Lessee, identifying the breach and requiring it to be put right;

then, the Council will be entitled to terminate this Lease and may enter into possession of the Land. The right to terminate the Lease and enter into possession will not reduce the Council's rights to take any other action for any of the Lessee's previous breaches.

6.5 Default Interest

6.5.1 The Council will be entitled to charge the Lessee interest at the rate which would be charged by the Council's bank on the Council's overdraft accounts plus 2 per centum per annum.

6.5.2 Interest will accrue on any moneys due but unpaid by the Lessee, calculated from the due date for payment until the money has been paid in full.

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6.6 Termination or Reduction of Rent after Damage

If the whole or any part of the Land is destroyed or damaged thus making them substantially unfit for the Lessee's use and occupation or so that the Lessee is deprived of substantial use of the Land then:

6.6.1 The rent and other payments due under this Lease, or a proportionate part of them, will be reduced. The reduction will depend upon the nature and extent of the damage sustained and will continue until the Land is rebuilt, reinstated or made fit for the Lessee's occupation and use or until the Lease is terminated in accordance with the provisions of this clause;

6.6.1.1 Where there is any dispute about the amount by which the rent or other payments should be reduced then either party may instruct an independent Licensed Valuer to determine the amount of the reduction. The Licensed Valuer's costs will be shared equally by the parties.

6.6.2 If after six (6) months the Land has not been substantially reinstated this Lease may be terminated by either party by notice in writing to the other;

6.6.3 Any such termination will not reduce the rights of either party in respect of any previous breaches of this Lease;

6.7 Loans to Lessee

If the Council at any time during the currency of this Lease or during any period of holding over lends or advances any money to the lessee, or offers a guarantee for any money lent or advanced to the Lessee, then it is agreed that any loan moneys including principal and/or interest due by the Lessee to the Council will be deemed to be rental due hereunder and any other duties and obligations of the lessee in relation to such loan or guarantee will be deemed to be duties and obligations under the Lease. In the case of any breach or default of such duties or obligations the provisions of clause 6.4 of this Lease will apply as if such breach or default were a breach or default of this Lease.

6.8 Resumption

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6.8.1 If after the Council receives notice of any proposed resumption or acquisition of the Land by any Government (whether Federal or State) or other authority, or if the control of the Land is otherwise taken away from the Council, the Council will be entitled to terminate this Lease and neither party will be permitted to bring any claim or action against the other except for any previous breaches of this Lease.

6.8.2 The Council will use its best endeavours to obtain compensation from any Government whether Federal or State.

6.9 Renewal

6.9.1 The Lessee will be entitled to an extension of this Lease for each of the periods (if any) set out in Item 9 of the Schedule provided that:

6.9.1.1 the Lessee gives the Council a written notice of its desire to be granted the extension, not less than three (3) and not more than six (6) months before the expiration of the current Term of the Lease;

6.9.1.2 the Lessee is not in breach of the Lease either at the time the notice is given or any time up to the expiry of the current term of the Lease; and

6.9.1.3 the Lessee has not committed any frequent and/or substantial breaches of the Lease during the current term or any previous term of the Lease.

6.9.2 Each extended term will be on the same terms and conditions as this Lease or such other terms as the parties may agree but will exclude the right to a renewal just exercised.

6.9.3 The rent payable from the commencement of the renewed term will be calculated in the same manner as set out in clause 4.1 of this Lease.

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6.9.4 If Item 9 of the Schedule is not filled in then the Lessee will not be entitled to an extension of the term of the Lease.

6.10 Holding Over

If the Lessee continues to occupy the Land after the expiry of the term, or after the Lease is terminated then the Lessee will be a monthly tenant occupying the Land on the terms and conditions contained in this Lease.

6.11 Waiver

The failure or omission by the Council to take any action for breach of any of the terms of this Lease will not stop the Council from taking action in relation to any other breaches of the same or any other term or condition of the Lease.

6.12 Notice

Any notice which is required to be given by either party must be in writing and must be delivered to the other party at the address which appears in the Schedule or other place previously nominated. Notices to the Council must be addressed to the Chief Executive Officer.

6.13 Obligations

Where the Lessee is made up of two or more persons, then the liability of those persons for the performance and observation of the terms, covenants, conditions and agreements of this Lease will be joint and several.

6.14 Severance

If any term of this Lease is invalid, unlawful or not applicable, then it will be deleted from the Lease without affecting any other of the parties' obligations under this Lease.

6.15 Entire Agreement

The terms contained in this Lease comprise the whole of the agreement between the parties. It is expressly agreed and declared by the parties that no further or other terms exist between the parties with respect to the Land or the Lease.

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6.16 No Warranty

6.16.1 The Lessee specifically acknowledges that before signing this Lease it was given no warranty in respect of the suitability of the Land (whether structural or otherwise) for the use by the Lessee.

6.16.2 Nor was any warranty given in respect of the fittings, fixtures, facilities and amenities contained on the Land.

6.17 Conditional Lease

This Lease is subject to the Lessee obtaining at its own expense any necessary approvals or consents.

6.18 Form 5

Immediately before the Lessee signed this Lease it was given the Form 5 which is annexed to the Lease for signing.

6.19 Costs

6.19.1 If this Lease amounts to a Commercial Tenancy Agreement as defined in the Landlord and Tenant Act, 1936 then the Lessee will pay the stamp duty assessed on the Lease.

6.19.2 If this Lease is not a Commercial Tenancy Agreement then the Lessee will pay all of the Council's reasonable costs incurred in preparing this Lease. The Lessee will pay stamp duty.

6.19.3 The Lessee will pay all the Council's cost as a result of any threatened or actual breach of the Lease by the Lessee.

6.20 Interpretation

In this lease -

6.20.1 Reference to any legislation includes subordinate legislation, and all amending or substituting legislation;

6.20.2 Words in the singular are capable of including the plural and vice versa, and words importing one gender are to

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be read as including the other genders where appropriate;

6.20.3 Any reference to a natural person will also apply to a body corporate and vice versa:

6.20.4 Headings are for convenience of reference only and do not affect the construction or interpretation of this lease;

6.20.5 Any reference to the Term of this lease includes any extension of it;

6.20.6 All moneys payable by the Lessee to the Council under this Lease will be recoverable as a debt or at the Council's option in the same manner as rent in arrears;

6.20.7 The terms, covenants, conditions and agreements in this lease are in addition to and without prejudice to those implied by the Real Property Act, 1886 and the Law of Property Act, 1936 except insofar as they are altered or modified in the Lease;

6.20.8 The "Council" includes its servants, agents and workers;

6.20.9 The "Land" includes all the structures, improvements, fixtures and fittings located on the Land at the Commencement Date.

The parties acknowledge the preceding clauses by their execution of this Lease.

THE COMMON SEAL of)
CITY OF MOUNT GAMBIER)
was affixed to give effect)
to a resolution of the Council,)
in the presence of:)

F. McDonnell.
..... Mayor

..... Chief Executive Officer

[EKD 1850886m.112]

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THE COMMON SEAL of)
QUEEN ELIZABETH PARK TRUST)
INCORPORATED was affixed in)
the presence of:)

..... Sealholder

..... Sealholder

[EKD 1850886m.112]

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LEASE SCHEDULE

ITEM 1 The Council	CITY OF MOUNT GAMBIER of 10 Watson Terrace Mount Gambier 5290
ITEM 2 The Lessee (Names and addresses)	QUEEN ELIZABETH PARK TRUST INCORPORATED of PO Box 773 Mount Gambier 5290
ITEM 3 The Term	Twenty four (24) years
ITEM 4 The Commencement Date	June 30, 1995
ITEM 5 The Rent and Time of Payment	TWO HUNDRED DOLLARS ($200.00) per annum payable yearly in advance for the first four years of the term of this Lease.
ITEM 6 Use of Land	Nine hole golf course and matters ancillary thereto.
ITEM 7 Date the Lease is made	The 20th day of June 1995
ITEM 8 The Land	The whole of the land comprised in Certificate of Title Register Book Volume 4144 Folio 600, Volume 4144 Folio 601 and portion of the land in Volume 4144 Folio 602 being the land contained in Lot 1, Lot 2 and Pt Lot 3 in FP 5701 as shown on the attached plan and marked "F".
ITEM 9 Period of Extension	Nil
ITEM 10 Special Conditions	As per Annexure "A"

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ANNEXURE A

SPECIAL CONDITIONS

1. Council reserves for itself and its servants, agents and any other statutory or government authorities the right at any reasonable time to enter the Land to carry out any necessary works in order to monitor, test, and rehabilitate the site of the former refuse disposal area. Such work may involve the location of monitoring devices and equipment on or underneath the Premises. The Council will use its best endeavours to cause as little inconvenience to the Lessee as possible.

2. The Lessee must not interfere with any monitoring bores or testing instruments located on or under the Premises or at the site of the former refuse disposal area.

3. The Council reserves for itself and its servants and agents together with any necessary vehicles the right to pass over the Land for the purpose of obtaining access to the Council's adjacent land. The Council will use its best endeavours to cause as little inconvenience to the Lessee as possible.

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FORM 5
LANDLORD AND TENANT (COMMERCIAL TENANCIES) REGULATION 1986
Regulation 6a
IMPORTANT INFORMATION FOR NEW TENANTS

A. PARTIES	
LANDLORD (As set out in commercial tenancy agreement)	CITY OF MOUNT GAMBIER
Tenants have a right to assign or sub-let in some circumstances. Discuss with your landlord and, if in doubt obtain independent advice.	

B. Land	
POSTAL ADDRESS	N/A
Relocation N/A	

C. TERM	
TERM OF AGREEMENT	TWENTY FOUR (24) YEARS
COMMENCEMENT DATE	JUNE 30, 1995
RIGHT OF RENEWAL	N/A

D. RENT	
RENTAL PER ANNUM	TWO HUNDRED DOLLARS ($200.00) PER ANNUM
METHOD OF PAYMENT	YEARLY IN ADVANCE
(*Delete if not applicable) *This rent may change. See clause 4.1	

E. SECURITY BOND	
AMOUNT OF SECURITY BOND	N/A

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F. OTHER PAYMENTS		
BEFORE THE TERM OF THE AGREEMENT COMMENCES YOU WILL HAVE TO PAY:		
PAYEE	AMOUNT	REASON FOR PAYMENT
COMMISSIONER OF STAMP DUTIES	$2.00	STAMP DUTY
Set out details of persons (including the landlord) to whom payments in addition to rent and security bond are to be paid; reasonable estimates of the tenant's liability for payment.		
(*Delete if not applicable) *You will have to pay building insurance. See clause 6.3 of the Lease. By law, you must receive regular details of these operating expenses and estimates of the amount you must pay. The first statement will be given to you.		

YOU MUST SIGN THIS NOTICE BEFORE SIGNING ANY OTHER DOCUMENTS GIVEN TO YOU WITH IT.
BEFORE SIGNING, READ THIS INFORMATION CAREFULLY AND ALSO READ ALL THE OTHER DOCUMENTS - ESPECIALLY YOUR AGREEMENT - BEFORE SIGNING THEM.
IF YOU DO NOT UNDERSTAND SOMETHING ASK YOU LANDLORD TO EXPLAIN IT. IF YOU ARE STILL IN DOUBT SEEK INDEPENDENT ADVICE.

.....
Tenant

20.1.6.1995.
Date

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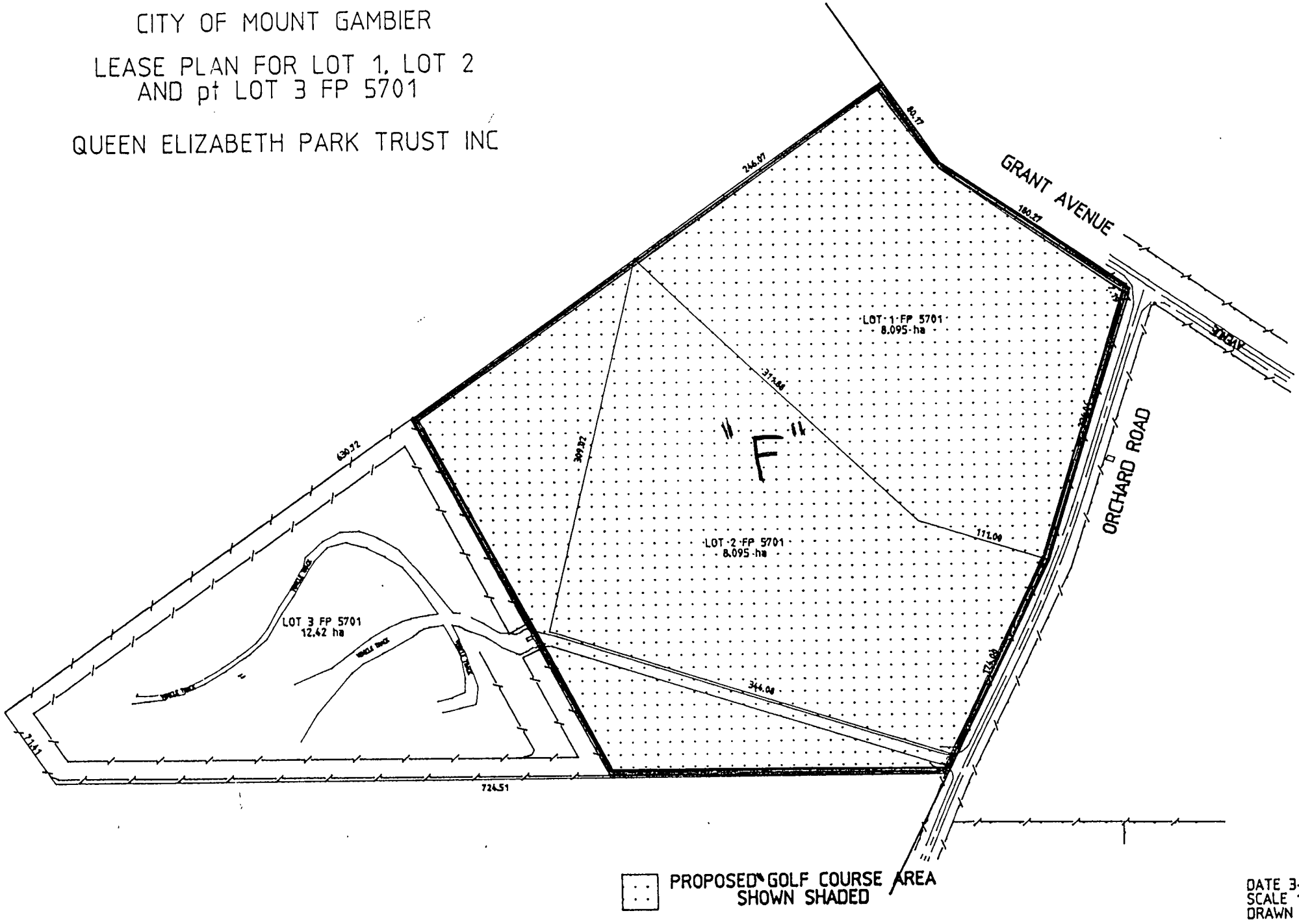
CITY OF MOUNT GAMBIER

LEASE PLAN FOR LOT 1, LOT 2 AND pt LOT 3 FP 5701

QUEEN ELIZABETH PARK TRUST INC



DATE 3-2-95
SCALE 1:4000
DRAWN S.C.

City of Mount Gambier

LOCAL GOVERNMENT ACT 1999 – SECTION 196

COMMUNITY LAND MANAGEMENT PLAN

Owner: Minister for Environment and Heritage

Care, Control and Management: City of Mount Gambier

Reserve Title Description: CT5550/453, CT5616/375, CT5616/374, CT5616/373, CT5616/372, CT5616/346, CT5617/256, CT5616/336, CT5616/334, CT5616/333, CT5616/331, CT5710/128, CT5504/27, CT5749/932, CT5756/828, CT5581/298, CR5696/867, CT5539/334, CT5597/131, CR5850/973, CR5850/976, Water, CT5397/856, CT5375/4, CT5398/856, CT5891/900, CT5891/901, CR5947/867

Reserve Address: Crater Lakes - Bay Road

Reserve No: 2, 122, 67, 155, 3, 12

Asset No: 2, 122, 123, 124, 125, 126, 127, 129, 130, 131, 132, 136, 137, 138, 139, 140, 146, 155, 220, 221, 3, 12, 190, 191, 486, 487, 550

General Description:
Crater Lakes Reserve containing volcanic craters, wildlife park, public recreation areas, playgrounds, grassland areas, sporting areas, trees and significant public buildings, monuments and leased facilities (caravan/tourist park, golf links, club house).

Purpose of Land:
Crown Land under the care, control and management of the City of Mount Gambier.
State Heritage Area of significant historical and cultural significance.
To provide for passive and active recreation (including caravan park and golf links).
To provide for the interpretation of natural, cultural and built environment within the Crater Lakes Complex.
To provide a nationally significant tourism attraction.

Objectives of Land:
To retain, and if possible enhance the area as a significant cultural and historical area.
Preserve and conserve the significant history of the area in accordance with principles established in the "Crater Lakes Conservation Management Plan" of May 2004, with particular emphasis on historical and cultural details.
Provide and use the area for significant events, including events of ceremonial nature.
To provide for a wide range of Community uses including passive and active recreation, structured sporting and recreation events, interpretation of natural, cultural and built environment.
Provide a playground of regional significance including an emphasis on access for the disabled.
Provide a Wildlife Park.
Provide physical infrastructure as appropriate to enhance the use of the area as a prime tourism attraction of national significance.
Provide for privately operated infrastructure including caravan park, golf links and associated facilities under long term leases and sub-leases for business purposes.
Control vegetation within the scope of the objectives set out in the Crater Lakes Conservation Management Plan in May 2004 and within the financial ability and limitations of Council.
Allow specified areas to be leased to Community based organisations (including the ability for such organisations to sub-lease to private interests for business purposes).

Proposal for Management:
Maintain (and enhance), all public buildings and public monuments to reflect and conserve their historical significance.
Maintain the landscaped area to a high level of presentation at all times.
Maintain built infrastructure to a high standard.
Ensure all tenants/occupiers of Council properties at the site understand and respect the history of the area and maintain buildings appropriately.

Performance Targets:
Grass in formalised areas to be generally less than 100 mm in length.
Formal areas to be maintained to a high level of presentation.
Built infrastructure to be maintained to a high level of presentation and functionality.
Infrastructure enhancements to be of a high standard and in accordance with State Heritage requirements.

Measure of Performance Targets:
Biannual inspection of trees in formal areas.
Regular inspections of all buildings and public monuments (including buildings occupied by lessees/tenants) and provide scheduled maintenance as required.
Random inspections by supervisors of grass cutting and good presentation.
Maintain (and action) complaints received in relation to the Crater Lakes.