Kelledy Jones

Wood Yard Lease

Alexandrina Council

The Friends of The Oscar W Incorporated

T. 08 8113 7100
Level 6/19 Gilles Street
Adelaide SA 5000
GPO Box 2024 SA 5001
ABN 66 159 460 723
kelledyjones.com.au

THIS LEASE AGREEMENT is made the 30 day of July 2024

BETWEEN

ALEXANDRINA COUNCIL ABN 20 785 405 351 of 11 Cadell Street Goolwa SA 5214 (the **Council**)

and

THE OF THE OSCAR W INCORPORATED of PO Box 527 Goolwa SA 5214 (the **Lessee**)

BACKGROUND

A. The Council is a council constituted under the *Local Government Act 1999*.

B. The Council is the registered proprietor of the whole of the Land.

C. The Lessee has requested and the Council has agreed to grant to the Lessee a lease of the Premises for the Permitted Use during the Term.

D. The Council and the Lessee record the terms of their agreement in this Lease.

THE PARTIES AGREE as follows:

1. **INTERPRETATION**

1.1 **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 Premises and any goods, services or other things provided by the Council under this Lease (other than GST payable under clause 18);

Business Day means a day that is not a Saturday, Sunday or declared public holiday in South Australia;

Commencement Date means the date shown as the commencement date in **Item 3**;

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* and any similar legislation;

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

Improvements means any alterations, additions or improvements to the Premises made by the Lessee during the Term, whether or not such improvements were approved by the Council as required under this Lease;

Initial Lease Term means the term of this Lease commencing on the Commencement Date and described in **Item 3**;

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

Legislation means any relevant Statute or Act of Parliament (whether State or Federal) and any regulation or by-law including by-laws issued by any Council or Local Government body or authority;

Lessee means the party described as "Lessee" and where the context permits includes the employees, contractors, customers, agents and other invitees of the Lessee;

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

Lessee's Share means the proportion of the area that the Premises bears to the Land;

LO&M Agreement means the agreement entitled "PS Oscar W: Lease, Operation and Maintenance Agreement" between the Council and the Lessee and dated on or about the date of this Lease;

Outgoings means that term as defined in **Item 8**;

Permitted Use means the use described in **Item 6**;

Premises means the part of the Land described in **Item 1**;

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

Renewal Term means a term (if any) of renewal or extension granted under this Lease, as identified in **Item 5**;

Rent means the rent described in **Item 4**;

Riverboat Centre Lease means the lease of a portion of the Goolwa Riverboat Centre to be entered into between the Council and FOW on or about the date of this Lease; and

Statutory Authorities means any authority created by or under any relevant

Legislation;

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

Term means the Initial Lease Term, the Renewal Term(s) and any period during which the Lessee holds over or remains in occupation of the Premises;

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

1.2 **Interpretation**

In the Lease, unless the contrary intention appears:

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

1.2.2 words beginning with capital letters are defined in clause 1.1;

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

1.2.4 a reference to an Item is a reference to an item in the Schedule;

1.2.5 a reference to a Schedule is a reference to the schedule of this Lease; and

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

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

1.2.8 the singular includes the plural and vice-versa;

1.2.9 a reference to an individual or person includes a corporation, partnership, joint venture, association, authority, trust, state or government body or authority and vice versa;

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

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

1.2.12 a reference to any statute or to any statutory provision include any statutory modification or re-enactment of it or any statutory provision substituted for it, and all by-laws, regulations;

1.2.13 "including" and similar expressions are not and must not be treated as words of limitation;

1.2.14 any special conditions in the 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; and

1.2.15 the Background is accurate and forms part of this Lease.

2. GRANT OF LEASE

The Council grants and the Lessee accepts a lease of the Premises for the Term as set out in this Lease.

3. RENT

The Lessee must pay the Rent to the Council annually in advance in the manner directed by the Council.

4. OUTGOINGS

4.1 Liability for Outgoings

The Lessee must pay to the Council when due all Outgoings (including, subject to the Act, Rates and Taxes) levied, assessed or charged in respect of the Premises or the Land, or upon the owner or occupier of the Premises or the Land.

4.2 Lessee's Share

If any Outgoings are not separately assessed or charged in respect of the Premises, the Lessee must pay the Lessee's Share of any such Outgoing.

4.3 Power and other utilities

4.3.1 The Lessee will be responsible for and pay when due (or reimburse the Council, if applicable) the full amount of all accounts, invoices, assessments and charges with regard to the consumption, use or supply of telephone, light, electricity, gas, and any and all other services and utilities supplied to or used from the Premises.

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

5. USE OF PREMISES

5.1 Permitted Use

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

5.2 **Operation of Lessee's business**

5.2.1 The Lessee must only use the Premises in accordance with generally accepted best practice for the Permitted Use.

5.2.2 The Lessee must conduct its operations and the Permitted Use in a good, lawful and orderly manner and to a high standard.

5.3 **Statutory Requirements**

The Lessee must obtain, keep current and comply with all consents, approvals, licences or other Statutory Requirements relating to:

5.3.1 the Lessee's use and occupation of the Premises;

5.3.2 the nature of the business or operations conducted on the Premises by the Lessee; or

5.3.3 any deliberate or negligent act or omission of the Lessee; and

5.3.4 including (but not limited to) any requirements for building works or modifications to the Premises (whether structural or otherwise).

5.4 **Signs**

The Lessee must not place any signs or advertisements on the outside of the Premises, or inside the Premises (if they can be seen from outside of the Premises), except a sign or signs advertising or promoting the name and nature of the business conducted on the Premises by the Lessee and which:

5.4.1 are approved (in writing) by the Council; and

5.4.2 comply with any relevant Statutory Requirements.

5.5 **Dangerous equipment and installations**

The Lessee will not install or bring onto the Premises except insofar as may reasonably be required in connection with the Permitted Use and with the consent of the Council:

5.5.1 any electrical, gas powered or other machinery or equipment which may pose a danger, risk or hazard to the Premises or any people;

5.5.2 any chemicals or other dangerous substances which by their nature, or their volume, may pose a danger, risk or hazard to the Premises or any people; or

5.5.3 any heavy equipment or items which may damage the Premises.

5.6 **Fire precautions**

The Lessee must:

5.6.1 comply with all requirements and directives issued by the Council from time to time (if any) with regard to fire safety systems and procedures including fire evacuation drills and other procedures; and

5.6.2 comply with all Statutory Requirements relating to fire safety and procedures including any required structural works or modifications to any building or structure on the Premises which are required as a result of:

(a) the Lessee's use or occupation of the Premises;

(b) the nature of the business or operations conducted on the Premises by the Lessee; or

(c) any deliberate or negligent act or omission of the Lessee.

5.7 **Notice of defect**

The Lessee must:

5.7.1 give the Council prompt notice of any circumstance or event of which the Lessee should reasonably be aware that might cause danger, risk or hazard to the Premises or to any person on the Premises; and

5.7.2 if required by the Council, promptly rectify any defect or want of repair to make the Premises safe from any danger, risk or hazard, at the Lessee's own cost.

5.8 **Security**

5.8.1 Subject to clause 5.8.2, to use the Lessee's best endeavours to protect and keep safe the Premises and any property contained in or on it from theft or robbery, including (where applicable) keeping all doors windows and other openings closed and locked when the Premises are not in use.

5.8.2 The Council will keep and maintain closed-circuit television security (CCTV) on the Land and Premises.

5.9 **No warranty**

The Council makes no warranty or representation regarding the suitability of the Premises (structural or otherwise) for the Permitted Use or any other purpose, and the warranty of fitness for purpose provided under section 18 of the Act is expressly excluded by the Council in this Lease.

6. **COMMON AREAS**

The Lessee acknowledges and agrees that:

6.1 during the Term of this Lease, the Council may from time to time designate certain roads, driveways, carparks, footpaths and other areas on the Land as common areas (the **Common Areas**);

6.2 the Lessee is granted a non-exclusive licence to access the Common Areas, only for the purpose of accessing the Premises;

6.3 the Council may grant rights to third parties to use and access the Common Areas together with the Lessee;

6.4 the Lessee will immediately comply with any directions given by the Council with respect to the Common Areas, and the Council may restrict access to any or all of the Common Areas at any time during the Term;

6.5 the Lessee indemnifies the Council against any actions, liabilities, penalties, claims or demands for any damage, loss, injury or death occurring on the Common Areas as a result of:

6.5.1 any act or omission of the Lessee on the Common Areas; or

6.5.2 the Lessee's use or occupation of the Common Areas; and

6.6 the Lessee releases the Council from all actions, liabilities, penalties, claims or demands for any damage, loss, injury or death:

6.6.1 occurring on the Common Areas;

6.6.2 resulting from any direction given by the Council under this clause 6; or

6.6.3 resulting from any restriction on access to the Common Areas or the Premises,

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

7. INSURANCE

7.1 Council to pay

7.1.1 Subject to clause 7.1.2, the Council agrees to pay or reimburse (as the case may be) the cost of any insurance required to be kept and maintained by the Lessee under this clause 7.

7.1.2 The Lessee agrees to provide to the Council a copy of any proposed insurance policy (and the premium payable) for review by the Council. If the Council considers the proposed policy does not meet the requirements of this clause 7 or the premium payable is excessive, the Council may, acting reasonably:

(a) refuse to pay or reimburse the cost of any such policy; or

(b) where the Council has formed the view that the premium is excessive, pay or reimburse only the portion of the premium that it considers reasonable.

The Council agrees that if it refuses to pay or reimburse the cost of any policy of insurance (or any part thereof) under this clause 7.1.2, it will first:

(c) give reasons to the Lessee of any such proposed action, having regard to competitive market rates for insurance policies appropriate for the purposes of this Lease; and

(d) provide the Lessee with not less than ten (10) Business Days to obtain a more competitive insurance policy (or, where the current insurance policies are scheduled to expire before the expiry of such time granted to the Lessee under this subclause (d), such lesser period to expiry, less one (1) Business Day).

7.2 **Lessee must insure**

The Lessee must keep current during the Term, for the Premises (including the Improvements) and the Lessee's Equipment:

7.2.1 public liability insurance for at least the amount in **Item 7** (or any other amount the Council reasonably requires) for each claim;

7.2.2 plate glass insurance;

7.2.3 all insurance in respect of the Lessee's Equipment and any Improvements for their full replacement value; and

7.2.4 other insurances required by law or which the Council reasonably requires for at least the amounts the Council reasonably requires.

7.3 **Requirements for policies**

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

7.3.1 note the Council as an interested party;

7.3.2 have no limit on the number of claims that can be made under it;

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

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

7.4 **Evidence of insurance**

On or before the Commencement Date, the Lessee must give the Council certificates evidencing the currency of the policies the Lessee has taken out under

this clause 6. During the Term the Lessee must:

7.4.1 pay or, provide an invoice for each premium promptly to the Council to pay, before it is due for payment;

7.4.2 give the Council certificates of currency each year when the policies are renewed and at other times upon the Council's request;

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

7.4.4 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.

7.5 **Insurance affected**

7.5.1 The Lessee must not do anything which will or may:

(a) prejudice any insurance required under this clause 6; or

(b) increase the premium for any insurance required under this clause 6.

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

8. REPAIR, MAINTENANCE AND ALTERATIONS

8.1 **Maintain, replace and repair**

8.1.1 Subject to the Act (if the Act applies to this Lease) and in accordance with the Lessee's obligations under clause 8.1.2, the Lessee must at all times during the Term, at the Lessee's own expense and without any notice or demand from the Council, keep, maintain, repair and replace (as applicable) to the reasonable satisfaction of the Council the Premises, the Lessee's Equipment and the Improvements such that they are in good repair, condition and working order (including, subject to the Act, such structural and capital maintenance, repair and replacement as is necessary from time to time).

8.1.2 The Lessee must maintain, repair or replace items in or attached to the Premises which are damaged or worn with items of the same or similar quality to those in use when they were last replaced with the Council's approval, or if they have not been so replaced, to those in use when the Lessee took occupation of the Premises.

8.2 **Alterations by Lessee**

8.2.1 The Lessee must not carry out any or undertake any Improvements to the Premises without the Council's prior written consent.

8.2.2 The Lessee must provide full details to the Council (including plans and specifications where relevant) of any proposed Improvements to the Premises.

8.2.3 The Council may impose any conditions it considers necessary if it gives its approval, including requiring the Lessee to obtain the Council's consent to any agreements that the Lessee enters into in relation to the Improvements.

8.2.4 The Lessee must carry out any approved Improvements at its own cost and:

(a) in a proper and workmanlike manner;

(b) in accordance with the conditions imposed by the Council (if any);

(c) in accordance with all Statutory Requirements; and

(d) in a way so as to minimise disturbance to others.

8.2.5 The Lessee will pay all of the Council's costs (including consultant's costs and legal costs) as a result of considering the Lessee's proposed Improvements to the Premises (whether or not consent is ultimately granted by the Council).

8.2.6 Unless the Council notifies the Lessee in writing otherwise, any Improvements to the Premises will remain the property of the Lessee during the Term and the Lessee will be responsible for maintaining such Improvements in accordance with this Lease.

8.3 **Cleaning**

The Lessee must at all times during the Term use reasonable endeavours:

8.3.1 to keep the Premises clean and tidy;

8.3.2 to keep the Premises free of vermin, insects and other pests; and

8.3.3 not to cause the Premises to be left untidy or in an unclean state or condition.

9. **ASSIGNMENT AND SUB-LETTING**

9.1 **Assignment**

The Lessee must not assign the Lessee's interest in the Premises or any part of it

under this Lease without the consent of the Council which consent may be withheld in the Council's absolute discretion unless the Act applies to this Lease, in which case the Council's consent may be withheld by the Council only if:

9.1.1 the proposed assignee proposes to change the use to which the Premises is put;

9.1.2 the proposed assignee is unlikely to be able to meet the financial obligations of the Lessee under the Lease;

9.1.3 the Council reasonably considers that the proposed assignee's business skills are inferior to those of the Lessee; or

9.1.4 the Lessee has not complied with procedural requirements for obtaining the Council's consent as set out in section 45 of the Act.

9.2 **Request for assignment**

If the Lessee requests that the Council consent to any assignment, transfer or parting with possession of the Premises (or any part of it), the Lessee must immediately on receipt of a request to do so from the Council:

9.2.1 pay all arrears of Rent any other moneys outstanding under this Lease and remedy all outstanding breaches and defaults and pay to the Council or its solicitors or agents such sum of money as is reasonably estimated by the Council as being required to remedy such breaches or defaults;

9.2.2 submit a true copy of all agreements to be entered into in respect of any proposed dealing with the Lease or the Premises including a true copy of any business sale agreement entered into by the Lessee as vendor, if applicable, and evidence satisfactory to the Council that the proposed transferee or assignee is respectable responsible solvent and suitable and any other information reasonably required by the Council about the financial standing and business experience of the proposed transferee or assignee;

9.2.3 if the proposed assignee or transferee is a trustee of a trust to submit a copy of the instrument under which such trust was constituted and the full names addresses and occupations of the beneficiaries of such trust;

9.2.4 procure the proposed assignee or transferee to submit to the Council a business plan setting out the proposed assignee's plans, intentions and projections concerning the business conducted at the Premises (and containing such details and particulars as are reasonably required by the Council); and

9.2.5 pay to the Council or its solicitors the reasonable costs and expenses of and incidental to any inspection of the Premises and enquiries concerning the proposed dealing or the persons concerned in such dealing and of

the perusal, preparation, negotiation and stamping of the documents deemed necessary by the Council;

and if such consent is given the Lessee shall ensure that prior to the date of any assignment or transfer the person to whom it is proposed to assign or transfer enters into a direct covenant with the Council to observe the terms of this Lease and furnishes such guarantees of the performance of such person's obligations under this Lease as the Council may reasonably require.

9.3 **Sub-lease, mortgage or licence**

The Lessee may not:

9.3.1 grant any sub-lease, licence or concession for the whole or part of the Premises;

9.3.2 otherwise part with possession of the whole or a part of the Premises; or

9.3.3 mortgage or otherwise charge or encumber the Lessee's interest under this Lease;

without the prior written consent of the Council which the Council may withhold in its absolute discretion.

9.4 **No release**

Subject to the Act, where the Council grants consent or is deemed to grant consent to an assignment, the Lessee as assignor will not be released or discharged from its current and future obligations and liabilities under this Lease for the balance of the Term.

10. COUNCIL'S OBLIGATIONS AND RIGHTS

10.1 **Quiet enjoyment**

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

10.2 **Right to enter**

The Council may (except in the case of emergency when no notice will be required) enter the Premises after giving the Lessee not less than three (3) Business Days' prior written notice:

10.2.1 to see the state of repair of the Premises, the Lessee's Equipment or any Improvements;

10.2.2 to do repairs or other works to the Premises as required or permitted to be undertaken by the Council under this Lease and, for this purpose,

interrupt any services to the Premises as necessary to undertake the repairs or works; or

10.2.3 to do anything the Council must or may do under this Lease or must do under any law or to satisfy the requirements of any Statutory Authority.

10.3 **Emergencies**

In an emergency the Council may:

10.3.1 close any building on the Premises; and/or

10.3.2 prevent the Lessee from entering onto the Premises or any building or structure on the Premises for so long as the emergency circumstances persist.

10.4 **Right to rectify**

10.4.1 Subject to clause 10.4.2, the Council may at the Lessee's cost do anything which the Lessee should have done under this Lease but which the Lessee has not done or which the Council reasonably considers the Lessee has not done properly.

10.4.2 Prior to undertaking any works as permitted by clause 10.4.1, the Council must first provide the Lessee with a notice of defects or works required to be undertaken by the Lessee, which notice must provide a reasonable period for the Lessee to rectify the defects or undertake the required works.

10.4.3 The Lessee will not make any claim or commence or maintain any suit or action against the Council for breach of the covenant contained in clause 10.1or otherwise in consequence of such entry or in execution of any of the works contemplated by this clause 10.4.

10.5 **Maintenance and repair**

Subject to the Act (if the Act applies to this Lease), the Lessee acknowledges and agrees that the Council has no obligation to maintain or repair the Premises, the Lessee's Equipment or any Improvements.

11. DAMAGE OR DESTRUCTION

11.1 If the Premises or any part of the Premises is damaged, and:

11.1.1 as a result of that damage, the Premises cannot be used for the Permitted Use or is inaccessible, then for the period during which the Premises cannot be so used or is inaccessible, the Lessee will not be obliged to pay any Yearly Amounts in respect of that period; or

11.1.2 the Premises can still be used for the Permitted Use but the level or extent

of useability is diminished due to the damage, the Lessee's liability for Yearly Amounts attributable to a period during which such useability is diminished will be reduced in proportion to the reduction in useability caused by the damage. If the Council and the Lessee are unable to agree within ten (10) Business Days as to the proportion by which the Yearly Amounts should be reduced, then an independent arbiter must be appointed to make a determination. The cost of the arbiter shall be borne by the parties equally.

11.2 If the Council notifies the Lessee in writing that the Council considers that damage to the Premises is such as to make its repair impractical or undesirable, the Council or the Lessee may terminate this Lease by giving not less than ten (10) Business Days' written notice to the other party.

11.3 If the Council does not terminate this Lease under clause 11.2 and the Council fails to repair the damage within a reasonable time after the Lessee has requested the Council in writing to do so, the Lessee may terminate this Lease by giving not less than ten (10) Business Days' written notice to the Council.

11.4 If this Lease is terminated by either party under this clause 11 then the rights and obligations of the Council and the Lessee 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.

11.5 If the damage to the Premises results from a deliberate or negligent act or omission of the Lessee, then the Lessee will not be relieved of its obligation to continue to pay the Yearly Amounts (and the provisions of clause 11.1 will not apply) unless:

11.5.1 the Council has an insurance policy covering loss of rent from the Premises as a consequence of that damage;

11.5.2 the Council is able to recover payment under that policy; and

11.5.3 the Lessee has contributed to the cost of that insurance as an Outgoing under this Lease and is not in breach or in arrears of any such contribution;

11.5.4 in which case the obligation of the Lessee to continue to pay the Yearly Amounts will be reduced by an amount equivalent to the payment (if any) received under that insurance policy.

The provisions of this clause 11 do not prejudice or alter the rights and entitlements of the Council to recover loss and damage from the Lessee if and to the extent that the damage to the Premises is caused or contributed to by any deliberate or negligent act or omission on the part of the Lessee.

12. RENEWAL

12.1 Rights of renewal

If the Lessee wishes to exercise any right of renewal described in **Item 5**, then the Lessee must serve a written notice on the Council not less than three (3) months and not more than six (6) months prior to the expiry of the Initial Lease Term or the preceding Renewal Term (as the case may be) stating its desire to renew this Lease for the relevant Renewal Term specified in **Item 5**. If such notice is given then:

12.1.1 the Council will be obliged to renew this Lease for the relevant Renewal Term on the same terms and conditions as are contained in this Lease except (in the case of the final Renewal Term) for the exclusion of this clause 12.1; and

12.1.2 the Renewal Term commences immediately after the expiration of the Initial Lease Term or the preceding Renewal Term (as the case may be).

12.2 No renewal entitlement

The Lessee will not be entitled to a right of renewal pursuant to clause 12.1 if:

12.2.1 the Lessee is in breach of a term of this Lease before or at the time of giving notice of the Lessee's desire to exercise the right of renewal; or

12.2.2 the Lessee is in breach or commits any breach of a term of this Lease after the Lessee giving notice under clause 12.2.1 but before commencement of the relevant Renewal Term.

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, in which case it will come to an end when such earlier termination is effected.

13.2 Handover of possession

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

(a) remove all of the Lessee's Equipment and repair any damage caused by such removal;

(b) if required by the Council, remove any Improvements and reinstate, to the Council's satisfaction, the Premises to the condition it was immediately prior to the Lessee having commenced occupation; and

(c) carry out and complete any repairs and maintenance which the Lessee is obliged to carry out under this Lease,

such that the Premises are handed over to the Council in good order and repair and working condition.

13.2.2 If it is not practical for the Lessee to undertake and complete these requirements before the Lease comes to an end, then the Lessee must undertake such works immediately after the Lease comes to an end in accordance with any reasonable requirements of the Council relating to security, access and time for completion.

13.2.3 When this Lease comes to an end the Lessee will:

(a) hand over vacant possession of the Premises in good repair and condition; and

(b) hand over to the Council all keys and other security devices for the Premises which the Lessee has in its possession or control.

13.2.4 If at the time that possession of the Premises is given back to the Council, the Lessee has not complied with all or any of its obligations under this clause 13.2, the Lessee will not be relieved of its obligation to comply with those requirements, or to compensate the Council for failure to do so, by reason of the fact that the Council has accepted or taken possession of the Premises.

13.3 **Ownership of Improvements**

If, during the Term of this Lease the Lessee has undertaken any Improvements to the Premises, then upon expiration of the Term or earlier determination of this Lease, the Lessee must remove all Improvements and reinstate the Premises in accordance with clause 13.2.1 of this Lease.

13.4 **Abandoned goods or Improvements**

Subject to the requirements of the Act (if applicable) if, when this Lease comes to an end, or within a reasonable time following expiration of this Lease:

13.4.1 the Lessee leaves any goods or the Lessee's Equipment at the Premises, then the Council will be entitled to deal with and dispose of those items as the Council sees fit, including (but not limited to) selling those items with any profits from such sale to be retained by the Council; or

13.4.2 the Lessee has failed to remove the Improvements as required by clause 13.2.1, then the Council may undertake such rectification works as required to be undertaken by the Lessee and recover the cost of those rectification works from the Lessee as a debt.

14. BREACH

14.1 **Payment obligations**

The Lessee must make payments due under this Lease:

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

14.1.2 without set-off, counter-claim, withholding or deduction;

14.1.3 to the Council or as the Council directs; and

14.1.4 by direct debit or such other means as directed by the Council.

14.2 **Default, breach and re-entry**

In the event that:

14.2.1 the LO&M Agreement or the Riverboat Centre Lease is terminated (but to avoid doubt, does not include the expiry of the Riverboat Centre);

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

14.2.3 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, and such breach or default has continued for at least fourteen (14) days following service of a notice of default on the Lessee by the Council;

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

14.2.5 the Premises are left unoccupied for one (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 Premises and to repossess and enjoy the Premises as its own estate, and/or to terminate this Lease.

14.3 **Rights of Council not limited**

In the event the Council exercises its rights under clause 14.2 of this Lease:

14.3.1 such action will not exclude, limit or prejudice any other action or remedy which the Council has or might have or otherwise could have for any breach of this Lease by the Lessee (including but not limited to any loss or damage suffered by the Council as a result of such breach); and

14.3.2 the Council will be freed and discharged from any action, suit, claim or demand by or obligation to the Lessee under or by virtue of the Lease.

14.4 **Repudiation and damages**

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

(a) the obligation to pay Rent;

(b) the obligation to pay Rates and Taxes;

(c) the obligation to pay Outgoings;

(d) the obligations and prohibitions in relation to use of the Premises; and

(e) the restriction on assignment, sub-letting, mortgaging and licensing.

14.4.2 If the Council accepts payment of any money 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.

14.4.3 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.

14.4.4 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 money which the Council would otherwise have received under this Lease had the Lessee not breached an essential term or repudiated this Lease.

14.4.5 The rights of the Council under this clause 14.4 and any action taken by the Council 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.

14.5 **Council's rights on breach**

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 come onto the Premises without notice and do all things necessary to remedy that breach. The Lessee must 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.

14.6 **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 fourteen (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.

15. DISPUTE RESOLUTION

15.1 If any dispute or disagreement arises between the parties in connection with this Lease, the parties undertake to use all reasonable endeavours, in good faith, to settle the dispute or disagreement by negotiation between representatives of both parties.

15.2 In the event that negotiations do not resolve the dispute within thirty (30) days then a mediator agreeable to both parties may be engaged to seek a resolution. If the parties cannot agree upon a mediator, the mediator will be appointed by the President or Acting President of the Law Society of South Australia. The cost of the mediator will be borne equally by both parties.

15.3 Nothing in this Lease is intended to limit either party's right to seek a legal remedy for any dispute that arises.

15.4 The parties agree that matters arising out of any conflict must be kept confidential.

16. HOLDING OVER

If, with or without the Council's consent, the Lessee continues to occupy the Premises after the end of this Lease, the Lessee does so as a monthly tenant which:

16.1 either party may terminate on one (1) month's notice given at any time; and

16.2 is on the same terms as this Lease.

17. INDEMNITY AND RELEASE

17.1 **Risk**

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

17.2 **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 in connection with:

17.2.1 any act or omission of the Lessee;

17.2.2 the overflow or leakage of water or any other harmful agent into or from the Premises;

17.2.3 any fire on or from the Premises;

17.2.4 loss or damage to property or injury or death to any person caused by the Lessee, the use of the Premises by the Lessee, or otherwise relating to or occurring on the Premises;

17.2.5 a breach of this Lease by the Lessee; or

17.2.6 the Lessee's use or occupation of the Premises.

17.3 **Release**

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

17.4 **Indemnities are independent**

Each indemnity is independent from the Lessee's other obligations and continues during this Lease and after this Lease ends. The Council may enforce an indemnity before incurring expense.

17.5 **Council's liability**

Despite anything else in the Lease, the Council will not be liable (except to the extent of any negligence of the Council) for any loss or damage, and the Lessee has no right to terminate this Lease or reduce payments under this Lease, for any acts or omissions of other occupants of the Land including any members of the public.

18. POWER OF ATTORNEY

18.1 **Appointment**

If the Council becomes entitled to re-enter and take possession of the Premises after complying with any relevant statutory provision, the Lessee irrevocably appoints the Council to be the attorney of the Lessee to execute any documents and perform any acts the Council requires to give full effect to the power of re-entry under the *Real Property Act 1886*.

18.2 **Ratification**

The Council may do, execute and perform all things relating to the Premises as fully and effectually as the Lessee could do. The Lessee must ratify and confirm the appointment of and all actions by the Council under this clause.

19. REDEVELOPMENT

If for any reason the Council wishes to redevelop, renovate or demolish the Premises or any part of the Premises or the Land (the **Redevelopment**) then the Council may terminate this Lease subject to the following provisions:

19.1 if the Redevelopment involves demolition of the Premises:

19.1.1 the Council must provide the Lessee with details of the proposed Redevelopment sufficient to indicate a genuine proposal to carry out that Redevelopment within a reasonably practicable time after this Lease is to be terminated; and

19.1.2 at any time after providing the Lessee with those details, the Council may give the Lessee written notice of termination of this Lease (the **Demolition Notice**) specifying the date on which this Lease is to come to an end, being a date not less than six months after the Demolition Notice is given;

19.2 if the Redevelopment does not involve demolition of the Premises the Council may give the Lessee written notice of termination of this Lease ("the Termination Notice") specifying the date on which the Lease is to come to an end being a date not less than three months after the Termination Notice is given;

19.3 at any time after receiving a Demolition Notice or a Termination Notice, the Lessee may terminate this Lease by giving not less than seven (7) days' written notice to the Council;

19.4 Unless terminated earlier by the Lessee this Lease comes to an end at midnight on the day specified in the Demolition Notice or the Termination Notice (as the case may be); and

19.5 when either party terminates this Lease under this Special Condition, the rights and obligations of the Council and the Lessee under this Lease come to an end, except with regards to an existing breach (for which the parties' rights will continue after termination of this Lease).

20. RESUMPTION

20.1 The Council may terminate this Lease by giving at least three (3) months' written notice to the Lessee if the Council receives notice of resumption or acquisition of the Premises or the Land (or any part of the Land affecting the Premises) from or by any Statutory Authority.

20.2 Termination of this Lease under this clause 20 releases each party from further liability under this Lease, but does not affect a party's rights or liabilities for a prior breach.

21. GOODS AND SERVICES TAX

If a GST Legislation 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:

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

21.2 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

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

22. COUNCIL'S DISCRETION

The Council enters into this Lease as a council acting under sections 7 and 36 of the *Local Government Act 1999* and not in any other capacity. This Lease does not preclude or pre-empt the exercise by the Council of any other regulatory function or power.

23. RETAIL AND COMMERCIAL LEASES ACT

23.1 The parties acknowledge and agree that this lease has been entered into on the basis that the Act does not apply to this Lease by virtue of section 4(2)(g) of the Act and Regulation 4(1) of the Regulations for the following reasons:

23.1.1 the Council is a district council;

23.1.2 the Rent payable under this Lease is less than $50,000 per annum; and

23.1.3 the Lessee is an entity that is not carried on for the purpose of profit or gain to its individual members and that is, by the terms of its constitution, prohibited from making any distribution, whether in money, property or otherwise, to its members.

23.2 Notwithstanding clause 23.1, if:

23.2.1 a Court of competent jurisdiction determines that the Act does apply to this Lease; or

23.2.2 any Legislation is adopted or changed that has the effect of the Act applying to this Lease,

the Lessee agrees to consent an application under section 77 of the Act that the Act not apply to this Lease.

24. GENERAL

24.1 Incorporated association

If the Lessee is an incorporated association:

24.1.1 the persons executing this Lease on behalf of the Lessee have warranted to the Council that the Lessee is incorporated under the *Associations*

Incorporation Act 1985, and that its functions are compatible with the Permitted Use; and

24.1.2 the Lessee must provide the Council with:

(a) upon request by the Council, a copy of the Lessee's constitution, rules or by-laws;

(b) within 28 days of amendment of the Lessee's constitution, rules or by-laws, an updated copy of those documents; and

(c) upon execution of this Lease and upon any change in the appointment of officers of the Lessee, the full name and contact details of the current officers of the Lessee.

24.2 **Costs**

24.2.1 Each party will bear their own legal costs in connection with the negotiations for and the preparation of this Lease or any renewal or extension of it.

24.2.2 The Lessee will pay the Council's reasonable legal costs and other expenses incidental to any application by the Lessee for the consent of the Council to any transfer or assignment by the Lessee of this Lease or the Lessee's interest in it, or to any sub-letting by the Lessee, or to any mortgage, charge or encumbrance over the interest of the Lessee under this Lease or in the Lessee's Equipment or the Improvements (whether consent is granted or lawfully refused).

24.3 **Consent**

24.3.1 Unless otherwise provided in this Lease, in any case where the doing or execution of any act, matter or thing by the Lessee requires or is subject to the Council's consent or approval, that consent or approval may be given (conditionally or unconditionally) or withheld by the Council in its absolute discretion.

24.3.2 The Lessee must pay or reimburse the Council all costs, fees and expenses paid or incurred (including any fees of any agent or consultant) arising from or with respect to any application for consent or approval.

24.4 **No absolute caveat**

The Lessee must not lodge or caused or permit to be lodged any absolute caveat over the certificate of title for the Premises.

24.5 **Confidentiality**

24.5.1 Subject to applicable laws, the Lessee must keep confidential any information about the Council that becomes known as a result of this

Lease or the transactions it contemplates and, which information is not in the public domain.

24.5.2 This clause will remain enforceable by the Council notwithstanding the expiry or termination of this Lease.

24.6 **Waiver**

If the Council accepts or waives any breach of this Lease 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.

24.7 **Notice**

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

24.7.2 in the case of the Lessee, if left at the Premises, or if the Lessee has vacated the Premises, then if posted by pre-paid post to the last known address of the Lessee;

24.7.3 in the case of the Council, if posted by prepaid 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).

24.7.4 Notice served by prepaid post will be deemed to have been given or served five (5) business days after posting.

24.8 **Ombudsman**

The Lessee acknowledges that the *Ombudsman Act 1972* empowers the Ombudsman to investigate matters in the public interest. The Lessee must ensure compliance with all obligations arising under that Act and all applicable Legislation.

24.9 **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.

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

Executed as an agreement on the day of 2024.

THE COMMON SEAL OF ALEXANDRINA COUNCIL ABN 20 785 405 351 was affixed in the presence of:

ALEXANDRINA COUNCIL COMMON SEAL

Keith Parkes
Mayor

Nigel Morris
Chief Executive Officer

Common THE FRIENDS OF THE OSCAR "W" Seal

IMPORTANT NOTICE: The Lessee acknowledges and agrees that the Council gives no warranty that the Premises will, either at the Commencement Date or for the duration of the Lease, be structurally suitable for the Permitted Use.

THE COMMON SEAL OF THE FRIENDS OF THE OSCAR W INCORPORATED was affixed in accordance with the Rules of the Association the presence of:

Signature of Authorised Office Bearer

Signature of Authorised Office Bearer

George KAISER
Name of Authorised Office Bearer

President

CLIVE HARRIS. TREASURER
Name of Authorised Office Bearer

18/7/24
Date

SCHEDULE

ITEM 1 **Premises**	That portion of the Land being the land delineated in red on the plan attached as **Annexure A** and commonly known as the "Wood Yard".
ITEM 2 **Land**	The whole of the land comprised in Certificate of Title Volume 6016 Folio 891 being more commonly known as the Goolwa Community Precinct located at 126 Kessell Road Goolwa SA 5214 and delineated and shaded in blue on the plan attached as **Annexure A**.
ITEM 3 **Initial Lease Term**	Commencing on the date on which the Tenancy Conditions (as that term is defined in the LO&M Agreement) are satisfied or waived (the **Commencement Date**) and expiring contemporaneously with the Initial Term (as that term is defined in the LO&M Agreement).
ITEM 4 **Rent**	**$1** per annum (plus GST) (if demanded).
ITEM 5 **Renewal Term**	5 years
ITEM 6 **Permitted Use**	Maintenance, storage and operational activities related to the operation of the PS Oscar W (excluding to maintain, keep, or store the PS Oscar W), including but not limited to the cutting and storage of wood and related activities.
ITEM 7 **Public Liability Insurance**	Coverage of at least twenty million dollars ($20,000,000.00) per claim
ITEM 8 **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 Premises including (but not limited to): o if the Premises are not separately levied or assessed for any Rates and Taxes, then any such Rates and Taxes which are levied or assessed in respect of the Land; o the cost of insuring the Premises; o the cost of insuring the Council against public risk; o the amount of any excess or deductible not paid or excluded under any insurance policy taken out by the Council; o the cost of insuring the Council against loss of Rent and other

	consequential loss for a period not exceeding twelve (12) months; o all costs of the council in connection with the maintenance, repair, replacement and renovation of the Premises from time to time; and o all costs of the Council in connection with preparing and providing any audited statement which is required to be prepared and/or provided under this Lease or by legislation.
Item 9 **Special Conditions**	1. **MAINTENANCE** Notwithstanding any other clause or Special Condition of this Lease, the Council and the Lessee will be responsible for repair, replacement and maintenance of the Premises in accordance with the Maintenance Schedule attached as **Annexure B**.

ANNEXURE A – PLAN OF PREMISES

LAND

PREMISES

GOOLWA WASTEWATER TREATMENT PLANT (SERVICE ROAD)
SKEWES ROAD
KESSELL ROAD
KESSELL ROAD

ANNEXURE B – MAINTENANCE SCHEDULE

BUILDING/S EXTERNAL
(includes all associated buildings, outbuildings & sheds)

Item	Lessee	Council
Flood lighting and similar	Full responsibility	Nil responsibility
Windows	Keep clean	Replace or repair as required and deemed appropriate
Roof and gutters	Nil responsibility	Full responsibility
Painting	Maintain	Repaint if deemed appropriate
Security	Full responsibility (excluding CCTV)	Council to retain CCTV monitoring of the Premises
External Pipes	Full responsibility.	Nil responsibility.
General Cleaning	Full responsibility	Nil responsibility
Graffiti removal	Full responsibility	Nil responsibility
Bee, snake or pest removal	Full responsibility	Nil responsibility
Waste water system	Nil responsibility.	Full responsibility.
Rain water tank	Full responsibility	Nil responsibility

BUILDING INTERNAL
(includes all associated building, outbuildings & sheds)

Item	Lessee	Council
Water, sewer and gas piping	Nil responsibility	Full responsibility
Electrical equipment and appliances (e.g. Testing and tagging)	Full responsibility for personal equipment	Full responsibility for Council owned equipment
Electrical services, switchboards, distribution boards, and power lighting circuits and meters.	Nil responsibility	Full responsibility
Signs	Full responsibility	Nil responsibility

Item	Lessee	Council
Water/waste services - associated fittings.	Full responsibility	Nil responsibility
Tapware, sinks, drains and toilets.	Full responsibility	Nil responsibility
Bee, snake or pest removal	Full responsibility	Nil responsibility
Fixed & loose furniture	Full responsibility	Nil responsibility

EXTERNAL SURFACES

Item	Lessee	Council
External Fencing surrounding the Goolwa Community Precinct	Lessee to maintain and replace is damage caused by Lessee neglect	Full responsibility unless damage caused by Lessee neglect.
Gates and internal fences surround Leased Area	Full responsibility	Nil responsibility
Carpark surfaces	Full responsibility	Nil responsibility
Driveway surfaces	Full responsibility	Nil responsibility
Waste management and removal	Full responsibility	Nil responsibility
Garden areas	Maintain, irrigate, mow as applicable	Nil responsibility
Tree branches, tree removal	Nil responsibility NB: No tree or branch removal without prior written consent from Council.	Full responsibility
Entrance feature	Full responsibility	Nil responsibility
Common Areas	Nil responsibility	Full responsibility
Signs	Full responsibility (Lessee signage)	Nil responsibility (except for any precinct signage)