



# Community Lease - Ground

**Portion of Milang Oval, 1406 Milang Road, Milang**

Alexandrina Council

and

Milang Oval Incorporated

Prepared by Alexandrina Council

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## Reference Schedule

|        |                 |                                                                                                                                                                                  |
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| Item 1 | Lessor          | <b>ALEXANDRINA COUNCIL</b> (ABN 20 785 405 351) of 11 Cadell Street, Goolwa SA 5214<br><br>Phone: (08) 8555 7000<br><br>Email: property.officers@alexandrina.sa.gov.au           |
| Item 2 | Lessee          | <b>MILANG OVAL INCORPORATED</b> (ABN 40 549 871 469) of 1406 Milang Road, Milang SA 5256<br><br>Phone: 0417 085 841 (Amanda Vivian, President)<br><br>Email: mil.man@bigpond.com |
| Item 3 | Premises        | That portion of the Land more particularly being the area delineated in red on the Plan attached in Schedule 1                                                                   |
| Item 4 | Land            | The land comprised in Crown Record Volume 5630 Folio 945 and located at 1406 Milang Road, Milang                                                                                 |
| Item 5 | Term            | Seven (7) years<br><br>Commencement Date: 01 July 2023<br><br>Termination Date: 30 June 2030                                                                                     |
| Item 6 | Permitted Times | 24 hour access, 7 days a week                                                                                                                                                    |
| Item 7 | Further Terms   | One right of renewal for a term of seven (7) years commencing on 01 July 2030 and expiring on 30 June 2037                                                                       |
| Item 8 | Lease Fee       | \$1.00 per annum (excluding GST) payable on demand                                                                                                                               |
| Item 9 | Permitted Use   | Community and recreation ground use or any other such use that the Lessor consents to                                                                                            |

**1. Septic/Waste Management**

- (a) The Lessee is responsible in their entirety for the plant, servicing, maintenance, repair and pump out costs associated with all septic and waste management services within the Lease Area.
- (b) Council will pump out the septic tank (if applicable) of the public toilets located in the Lease Area, not more frequently than once every 5 years.
- (c) Any additional pump outs required between the five year pump out undertaken by Council will be the responsibility and at the cost of the Lessee, or by prior negotiation with Council.
- (d) The Lessee is responsible in their entirety for the appropriate storage and removal of all general waste from the Premises.

**2. Ownerships of Improvements**

- (a) A map identifying each major improvement located within the Lease Area can be found at Annexure B;
- (b) To clarify, all buildings/sheds and structures within the Lease Area are owned by the Lessee except for the toilet block.
- (c) The toilet block is deemed owned by the Lessor, with general maintenance to be undertaken by the Lessee but any end of life or structural repairs to be the responsibility of the Lessor.
- (d) Maintenance obligations and responsibilities can be found in the Maintenance Schedule in Annexure A

**3. Trees and vegetation**

- (a) No trees, vegetation, shrubs or plants (whether dead or alive) are to be removed, damaged or interfered with, within the Lease Area or the adjoining Land, unless prior written approval has been given by the Council in accordance with Clause 4.2 of this Lease.

**4. Cooperation with Existing Tenant on the Land**

- (a) The Lessee:
  - (i) acknowledges that the Council has granted a Lease to another party to occupy parts of the Land other than the Premises (Existing Tenant);

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(ii) must co-operate in good faith with the Existing Tenant to ensure all occupants of the Land can use the Land in a harmonious manner; and

(iii) must seek to resolve any disputes with the Existing Tenants in a timely and respectful manner.

(b) If:

(i) The Lessee claims that a dispute has arisen with an Existing Tenant; or

(ii) The Lessee is advised by an Existing Tenant of a dispute raised by that Existing Tenant with the Lessee;

then the Lessee must give written notice to the Existing Tenant specifying the nature and details of the dispute;

(c) The Lessee must then use reasonable endeavours to arrange meetings with the Existing Tenant and negotiate in good faith to resolve the dispute.

(d) The Lessee must use reasonable endeavours to arrange meetings between those persons for those persons to negotiate in good faith to resolve the dispute.

(e) If the dispute is unable to be resolved within 10 Business Days of the first meeting the persons arrange then the Lessee may request Council to appoint a representative to act as a mediator to resolve the dispute. The Council may accept or decline such a request in its absolute discretion.

## **5. Use of Premises**

(a) The Lessor and Lessee acknowledge and agree that the Premises is used by a variety of groups.

(b) The Lessee may hire or sub-lease parts of the Premises to different groups for seasonal, periodic or 1 off events as long as the proposed use is

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consistent with the Permitted Use found in Item 9 of the Schedule.

- (c) If the proposed use is not consistent with the Permitted Use, then consent must be sought from the Lessor.

#### **6. Access and Common Areas**

- (a) Access to the Lease Area is from the main Oval entrance which is outlined in Blue in the Plan in Schedule 1.
  - (b) This area is deemed a Common Area and will be maintained equally by the Lessee and the Milang and District Historical Society as both parties will share this entrance.
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## 1. Definitions and Interpretation

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### 1.1 Definitions

In this Lease, unless the context requires otherwise:

|                          |                                                                                                                                                                                                                     |
|--------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Authority</b>         | means any federal, state or local government, semi-government, municipal, statutory or other authority or body charged with the administration of the law.                                                          |
| <b>Building</b>          | means all buildings erected or installed on the Land and includes any part of them.                                                                                                                                 |
| <b>Commencement Date</b> | means the date specified in Item 5.                                                                                                                                                                                 |
| <b>Common Areas</b>      | means those portions of the Land generally used for car parking and other areas designated by the Lessor from time to time for common use by the occupiers of the Land (if any).                                    |
| <b>Council</b>           | means the Alexandrina Council (ABN 20 785 405 351) of 11 Cadell Street, Goolwa SA 5214.                                                                                                                             |
| <b>Deal</b>              | means any sale, transfer, assignment, novation, declaration of trust or the grant of any option, pre-emptive right, mortgage, lease, Lease or any other right or interest (whether or a legal or equitable nature). |
| <b>Further Term</b>      | means the further term or terms set out in Item 7 (if applicable).                                                                                                                                                  |
| <b>Item</b>              | means an Item of the Schedule.                                                                                                                                                                                      |
| <b>Land</b>              | means the land described in Item 4.                                                                                                                                                                                 |
| <b>Lease</b>             | means this Lease.                                                                                                                                                                                                   |
| <b>Lessee</b>            | means the party named as the Lessee in Item 2.                                                                                                                                                                      |

|                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|-----------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Lessee's Agents</b>      | means each of the Lessee's representatives, officers, employees, agents, contractors, sub-contractors, Lessees, sub-Lessees, consultants, advisors and permitted invitees.                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>Lessee's Property</b>    | means the plant, equipment, and other fixtures and fittings at or about the Premises which the Lessee owns, operates, controls or leases/hires and other goods stored in or at the Premises.                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>Lessor</b>               | means the party named as the Lessor in Item 1 and the legal personal representatives, successors, permitted assigns and delegated officers of that party.                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>Lessor's Agents</b>      | means each of the Lessor's representatives, officers, employees, agents, contractors, sub-contractors, Lessees, tenants, consultants, advisors and permitted invitees.                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>Maintenance Schedule</b> | means the plan for scheduled maintenance of the Premises and Improvements approved by the Lessor and attached to this Lease as Annexure A, as amended and updated from time to time in accordance with this Lease.                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>Lease Fee</b>            | means the amount referred to in Item 8 of the Schedule.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>notice</b>               | means written notice.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>Outgoings</b>            | means all charges for: <ul style="list-style-type: none"> <li>(a) electricity, gas, water, sewage use, telephone, data, communications, security services, alarm systems and other services or utilities supplied (either by the Lessor or any other person or authority) to or consumed in or on or in respect of the Premises and any garbage and waste removal requested or used by the Lessee; and</li> <li>(b) all amounts properly paid or payable by the Lessor which the Lessor determines are in connection with the ownership, operation, management, maintenance and administration of the Premises.</li> </ul> |
| <b>Permitted Times</b>      | means the dates and times or frequency specified in Item 6.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>Permitted Use</b>        | means the use set out in Item 9.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |

|                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Plan</b>            | means the plan attached to this Lease as Schedule 1.                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>Premises</b>        | means the premises specified in Item 3.                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>Rates and Taxes</b> | means all present and future rates, charges, levies (including the Emergency Services Levy), assessments, duties, impositions and fees of any public, municipal or government body, authority or department including emergency services levies, council rates and water and sewerage rates, charges and levies and, subject to the <i>Retail &amp; Commercial Leases Act 1995</i> , land tax on a single holding basis in respect of the Premises. |
| <b>Schedule</b>        | means the schedule of this Lease entitled "Reference Schedule."                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>Services</b>        | means the services (including gas, electricity, water, sewerage, drainage and communications) supplied to or consumed on the Premises (irrespective of the identity of the supplier) together with all plant and equipment relating to those services.                                                                                                                                                                                              |
| <b>Term</b>            | means the term specified in Item 5.                                                                                                                                                                                                                                                                                                                                                                                                                 |

## 1.2 Interpretation

In this Lease, unless the context requires otherwise:

- (a) headings are for ease of reference only and do not affect interpretation;
- (b) the singular includes the plural and vice versa, and a gender includes other genders;
- (c) a reference to a party or to a document includes the party's heirs, executors, administrators, successors and permitted assigns;
- (d) a reference to this Lease or any other document includes a reference to it as novated, altered, replaced or amended and includes its schedule, annexures and appendices;
- (e) a reference to a person or persons includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (f) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- (g) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (h) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (i) where the words 'Not Applicable' appear opposite an Item in the Schedule then each clause which specifically refers to that Item is of no effect.

## 1.3 Retail & Commercial Leases Act

The Lessor and the Lessee agree that if the *Retail and Commercial Leases Act 1995* applies to this Lease, all provisions of this Lease (**Lease Provisions**) shall be read subject to any contrary provision which applies by virtue of that Act. To the extent to which any Lease Provision is inconsistent with a provision of that Act:

- (a) the Lease Provisions must be read down to the extent necessary to avoid the inconsistency; or
- (b) if the Lease Provision cannot be so read down, it must be severed without affecting the validity and enforceability of the remaining Lease Provisions.

## 2. Grant

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### 2.1 Grant

Subject to the provisions of this Lease, the Lessor grants and the Lessee accepts a lease of the Premises for the Term as set out in this Lease.

## **2.2 Ground Lease Acknowledgment**

For the avoidance of doubt, all parties acknowledge and agree that this is a Ground Lease only (bare ground) with all improvements severed from the land.

## **2.3 Use of Common Areas**

The Lessor grants to the Lessee and the Lessee's Agents the right to use (in common with other persons) the Common Areas (if any) subject to any restrictions contained in this Lease.

# **3. Lease Fee and other costs**

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## **3.1 Lease Fee**

- (a) The Lessee must pay the Lease Fee to the Lessor as reasonably directed by the Lessor annually in advance on the first day of the Term free from deduction set off and abatement. The Lessor must provide the Lessee with a tax invoice for GST purposes in advance of the annual instalment of the Lease Fee falling due.
- (b) The Lessor reserves the right to review the lease fee, should the use of the facility include retail or commercial sales (subject to the prior consent of Council).

## **3.2 Costs**

The parties agree to pay for their own costs in respect of the negotiation and preparation of this Lease.

## **3.3 Stamp duty**

The Lessee must pay any stamp duty assessed (if applicable) on this Lease by the due date for payment.

## **3.4 Other costs**

The Lessee must pay the Lessor's reasonable legal and other Costs of and incidental to:

- (a) any application by the Lessee for consent from the Lessor under this Lease, even if consent is not given;
- (b) any Dealing with this Lease, even if the Dealing does not proceed;
- (c) procuring the consent of any mortgagee to this Lease;
- (d) any breach of this Lease by the Lessee; or
- (e) any termination of this Lease other than by effluxion of time.

## **3.5 Rates, Taxes and Services**

- (a) The Lessee acknowledges that payment of all Outgoings and Rates and Taxes in respect of the Premises is the Lessee's sole responsibility.
- (b) The Lessee must pay all Outgoings and all Rates and Taxes as and when they are due and payable to the relevant taxing, rating or charging authority or body

or if the Outgoings or Rates and Taxes are not solely referable to the Premises, then to pay to the Lessor within seven (7) days of demand being made by the Lessor, the Lessee's Proportion of such Outgoings or Rates and Taxes.

- (c) The Lessee must arrange for Outgoings and Rates and Taxes to be invoiced directly to the Lessee and paid by the due date specified on the invoice. The Lessee must at the reasonable request of the Lessor provide the Lessor with a copy of the invoices and payment confirmation.
- (d) If there is no meter or no separate meter for recording or measuring any services and utilities forming part of the Outgoings, the Lessee shall arrange for the installation of a meter or a separate meter at the Lessee's cost.

The Lessee acknowledges and agrees that:

- (a) under Chapter 10 of the *Local Government Act 1999*, all land within the Council is rateable unless a specific exemption applies.
- (b) non for profit/community groups can apply to Council for a discretionary rate rebate. The rebate may or may not be approved at the discretion of the relevant Council and can be administered annually or for the term of the agreement.

## 4. Covenants by Lessee

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### 4.1 Lessee's obligations

The Lessee must:

- (a) only use the Premises for the purpose specified in Item 9;
- (b) make every payment under this Lease without set-off, counterclaim, withholding or deduction;
- (c) keep the Premises in:
  - (i) good repair and condition; and
  - (ii) a clean and tidy condition, free from rubbish, litter and fire hazards;
- (d) comply, on time, with all requirements, orders and notices of Authorities and any insurers and all laws concerning the Lessee's use or occupation of the Premises, and the Lessee's property;
- (e) immediately notify the Lessor of any damage caused to, defect or disrepair of, the Premises or of any circumstances likely to endanger or cause any risk or hazard occurring within the Premises or any person or property in the Premises upon becoming aware of it;
- (f) comply, at all times, with the Lessor's reasonable directions relating to the Premises; and
- (g) immediately give the Lessor a copy of any notice that it receives from any Authority relating to the Premises;

- (h) at its own expense, comply with all Laws and obtain, maintain and comply with the consents or approvals of any authority and any relevant permits or Leases (including any licence under the *Liquor Licensing Act 1997* if applicable) which may be necessary or appropriate for the Lessee's use of the Premises for the Permitted Use or any other use approved by the Lessor from time to time;
- (i) cause the Premises and the Improvements to be cleaned in a proper and workmanlike manner and kept clean and free from dirt and rubbish and particularly shall store and keep all trade waste trash and garbage in proper receptacles and arrange for the regular removal thereof from the Premises;
- (j) keep and maintain clean and in good order repair and condition all Improvements, fittings plant furnishings and equipment of the Lessee;
- (k) take all reasonable precautions to keep the Premises and the Improvements free of rodents, vermin, insects, birds and animals and in the event of its failing so to do the Lessee shall if and so often as is reasonably required by the Lessor but at the cost of the Lessee employ pest exterminators approved by the Lessor (such approval not to be unreasonably withheld);
- (l) keep the Improvements (if any) structurally sound, waterproof and in a safe condition, suitable for the Permitted Use.

#### 4.2 Lessee's restrictions

The Lessee must not and must ensure that the Lessee's Agents do not:

- (a) do or allow anything to be done that might damage the Premises (such as bringing heavy equipment onto the Premises);
- (b) make any alteration or addition to (including erecting any signs on) any part of the Premises without the Lessor's prior written consent;
- (c) cause any nuisance, damage, obstruction, annoyance or inconvenience to any adjoining occupants;
- (d) cut down, remove limbs, injure or destroy any living or deceased trees or shrubs upon the said Land, without the prior written consent of the Lessor;
- (e) interfere with, or overload, any Services provided to the Premises;
- (f) obstruct or otherwise impede access to any plant, equipment, thoroughfares or Services that are located in or adjacent to the Premises.

#### 4.3 No warranty

- (a) The Lessor gives no warranty as to the suitability of the Premises for any use. The Lessee accepts this Lease subject to any prohibitions or restrictions on the use of the Premises under any law.
- (b) The Lessee must, at the Lessee's cost, obtain and maintain all consents, permits, Leases and approvals required by law or by any Authority to permit the Lessee to occupy the Premises under this Lease before the Commencement Date.

## 5. Repair Damage

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### 5.1 Obligation to Repair

The Lessee must at its cost repair any damage to the Premises.

### 5.2 Termination

Upon the expiry or earlier termination of this Lease, the Lessee must:

- (a) remove all of its property, including any property installed on the Premises by the Lessee during the Term and must make good any damage caused by such removal to the reasonable satisfaction of the Lessor and restore the Premises to the same condition as existed at the Commencement Date (reasonable fair wear and tear excepted);
- (b) deliver the Premises to the Lessor in good repair, order and condition and in a thoroughly clean and tidy state free from all rubbish and waste; and
- (c) not remove any property of the Lessor or any fixtures from the Premises.

### 5.3 Notice to Repair Damage

The Lessor may give the Lessee verbal or written notice requiring the Lessee to repair any damage or undertake any work required by this clause within a reasonable time as specified in the notice.

### 5.4 Lessor may Repair Damage at Lessee's Cost

If the Lessee fails to repair any damage or undertake any work, the Lessor may at the Lessee's Cost undertake the repairs or other works.

## 6. Lessee Works

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### 6.1 Proposed works

- (a) If the Lessee wishes to undertake any Works to the Premises, the Lessee must:
  - (i) submit the plans and specifications of the proposed Works to the Lessor in such form as the Lessor may require;
  - (ii) obtain the Lessor's consent to the Works which may be given with or without conditions and will not be unreasonably withheld; and
  - (iii) if Planning Approval is required for the Works, obtain:
    - (A) the Lessor's consent to the lodgement of an application for Planning Approval; and
    - (B) the Planning Approval and provide a copy of it to the Lessor.

- (b) When this Lease ends (unless the Lessee becomes a lessee of the Premises under a new lease), the Lessee must, if so directed by the Lessor, reverse any Works undertaken during the term of this Lease or a prior lease and reinstate the Premises to its condition prior to the Works.

## 6.2 Insurance for Works

- (a) Prior to commencing the Works, and at all times until the Works are completed, the Lessee must keep, or ensure that any builder or other contractor engaged for the purpose of undertaking the Works keep current insurance policies covering:
  - (i) contractors' risk in respect of the Works and any damage to the Premises for the replacement value (including demolition and removal of debris);
  - (ii) public risk in respect of the Works on the Premises for at least \$20,000,000 for each accident or event or for such higher amount as the Lessor may reasonably require; and
  - (iii) workers' compensation insurance for each person who is or may be engaged in the construction of the Works.
- (b) The required insurance policies must otherwise comply with the requirements set out in clause **Error! Reference source not found..**

## 6.3 Undertaking Works

The Lessee must ensure that the Works are carried out:

- (a) in a good and workmanlike manner;
- (b) by properly qualified and experienced contractors;
- (c) in accordance with the applicable standards (including Australian Standards published by 'Standards Australia' and requirements under the National Construction Code current at the time of commencement of the Works);
- (d) in compliance with the Planning Approval for the Works; and
- (e) in compliance with all relevant Laws and all professional, licensing and legislative requirements in relation to Work, Health and Safety and all the rules, regulations, policies or guidelines issued by SafeWork SA, the Lessee's insurer or any relevant Authority in respect of the Works.

## 6.4 Principal Contractor

The Lessor appoints the Lessee, and the Lessee accepts the appointment, as principal contractor for the purposes of the *Work Health and Safety Act 2012* (SA). The Lessor accepts that the Lessee may, to the extent permitted by Law, appoint and require a building contractor to comply with the Work, Health and Safety requirements under the *Work Health and Safety Act 2012* (SA) and its regulation.

## **6.5 Works Information**

The Lessee must ensure that the Lessor is notified of the commencement and practical completion of the Works and promptly responds to any request to provide information, documents, or other materials in relation to the Works required by the Lessor.

## **6.6 Completion Documents**

Promptly following the completion of the Works the Lessee must provide the Lessor with evidence of completion, including:

- (a) as-built plans in a form satisfactory to the Lessor; and
- (b) a certificate in a form, and from a person acceptable to the Lessor, stating that:
  - (i) the Works are complete, except for minor defects and omissions that do not prevent the use of the Works for their intended purpose;
  - (ii) there is no waste material or debris on the Premises;
  - (iii) the Works have been constructed in a proper and workmanlike manner and to a standard that is reasonably satisfactory in all the circumstances;
  - (iv) the Premises are in a condition that is safe and physically suitable for its intended use; and
  - (v) the Works have been constructed in accordance with the plans approved by the Lessor and the Planning Approval (if Planning Approval was required).

## **6.7 Maintenance of Records**

The Lessee must maintain for the Term and 1 year after the Lease ends a comprehensive record of the matters relevant to the construction of the Works, including all plans, drawings, reports, applications to and consents from any Authority, licences and certificates and evidence of all payments. The Lessee must make these records available to the Lessor when requested.

## **6.8 Lessor's costs**

The Lessor shall be entitled to recover the cost of the Lessor's review of the Lessee's plans and specifications (including the cost of an architect or other consultant retained by the Lessor) and subsequent inspection upon completion of the Works from the Lessee.

# **7. Access and Lessor's right of entry**

---

## **7.1 Lessor's right of entry**

The Lessor, and its employees, agents and contractors, may enter the Premises, or any part, at any time to:

- (a) at reasonable times and upon giving reasonable notice (except in an emergency when no notice is required), examine and view the state and condition of the Premises;
- (b) exercise any right or obligation under this Lease; or
- (c) comply with any law or requirement of any Authority.

## **7.2 Lessor's obligation**

In exercising the Lessor's rights under clause 7.1, the Lessor must use reasonable endeavours to minimise any disruption or interference caused to the Lessee's business or the Lessee's use and enjoyment of the Premises.

## **7.3 Restrict access**

The Lessor may restrict access to the Premises:

- (a) if required by any Authority;
- (b) due to any other cause which, in the reasonable opinion of the Lessor, endangers or may endanger the Premises or any person or property in the Premises; or
- (c) if the Lessor, acting reasonably, needs to restrict access to the Premises in order to access, use, maintain, repair or replace any plant, equipment or Services that are located in or adjacent to the Premises.

## **7.4 Access by the public**

- (a) The public has a right of entry over the Premises.
- (b) The Lessee may restrict public access to those parts of the Premises when it reasonably considers that to allow public access would present a safety risk or hazard to members of the public, or a security or safety risk to the property of the Lessee, and in these circumstances the Lessee must:
  - (i) where possible, give advance notice to members of the public of any intention to exclude them from access to the Premises;
  - (ii) exclude public access by the erection of proper signs, barriers, gates and/or temporary fences; and
  - (iii) restore public access as soon as possible after the security or safety risk or hazard abates.

# **8. Indemnity and release**

---

## **8.1 Indemnity**

The Lessee is liable for and indemnifies the Lessor against all liability or loss arising from, and Costs incurred (whether before or after termination of this Lease) in connection with the Lessee's breach of this Lease and with damage, loss, injury or death caused or contributed to by the Lessee or the Lessee's Agents.

## 8.2 Release

The Lessee:

- (a) agrees to occupy, use and keep the Premises at the risk of the Lessee; and
- (b) releases, to the full extent permitted by law, the Lessor and its employees, agents and contractors, from all Claims of every kind in respect of or resulting from any accident, damage, death, loss or injury in connection with the Premises or the Lessee's use or occupation of the Premises except to the extent caused or contributed to by the default, negligence or wilful acts or omissions of the Lessor or persons for whom it is responsible for.

## 9. Insurance

---

### 9.1 Public risk insurance

The Lessee must, during the Term, effect and keep current a public risk policy with a reputable insurer (to be approved by the Lessor and on terms satisfactory to the Lessor) for the sum of \$20 million in respect of any single claim arising out of or in connection with the Lessee's use of the Premises, and which policy must note the interest of the Lessor.

### 9.2 Insurance of Lessee's Building and Contents (property)

- (a) The Lessee is responsible for insuring the Building and improvements on the Premises that are deemed owned by the Lessee.
- (b) The Lessee is responsible for insuring the Lessee's contents on the Premises, as deemed appropriate by the Lessee.
- (c) The Lessor will hold Building Insurance for the Toilet block only.

### 9.3 Not to vitiate insurance

The Lessee must:

- (a) not do anything whereby any insurance effected in respect of the Premises may be vitiated or rendered void or voidable; or
- (b) pay or reimburse the Lessor on demand for any excess amount payable on any claim made by the Lessor under its insurance or for any increased premium incurred by the Lessor on any insurance effected by it in respect of the Premises, which is due to the wilful acts, negligence or default of the Lessee.

### 9.4 Certificate of currency

The Lessee must annually produce to the Lessor a certificate of currency in respect of each insurance policy required to be effected under this clause 9.

## 10. Termination of Lease

---

### 10.1 Events of default

The Lessor may immediately terminate this Lease by written notice to the Lessee or may exercise any other legal right if:

- (a) the Lessee breaches any of the terms or conditions of this Lease and that breach continues for 7 days after written notice of the breach is served on the Lessee; or
- (b) the Lessee commits an Insolvency Event.

### 10.2 Lessor may rectify

If the Lessee does not comply with any term or condition of this Lease, then, without limiting any other right or remedy of the Lessor, the Lessor may (but is not obligated to), without notice, remedy that breach. The Lessee must pay or reimburse the Lessor on demand for any reasonable costs incurred by the Lessor in connection with remedying the breach.

### 10.3 Right of termination for convenience

- (a) The Lessee acknowledges and agrees that the Lessor may by giving not less than three (3) months' notice in writing to the Lessee, terminate this Lease.
- (b) In exercising its rights under clause 10.3(a) the Lessor will endeavour, where possible, to offer the Lessee alternative premises.
- (c) The Lessee:
  - (i) acknowledges and agrees that the Lessor is not obliged to offer alternative premises; and
  - (ii) releases the Lessor for all Claims in connection with termination of this Lease by the Lessor in accordance with this clause 9.3.
- (d) The Lessor acknowledges and agrees that the Lessee may by giving not less than three (3) months' notice in writing to the Lessor, terminate this Lease.
- (e) On and from the date of termination, each party is released from its obligations under this Lease other than in respect of an antecedent breach.

### 10.4 Termination without prejudice

Termination of this Lease under this clause 10 is without prejudice to any accrued right or liability of either party for any breach of this Lease arising before the date of termination.

## 11. Further terms

---

### 11.1 Right to further term

Subject to clause 11.2, if a Further Term is specified in Item 7 and the Lessee notifies the Lessor not more than six months nor less than three months before the end of the Term that it requires a Further Term, the Lessor may in its absolute discretion renew this Lease for the Further Term.

### 11.2 Lessor may refuse renewal

The Lessor may refuse to renew this Lease if:

- (a) the Lessee has not remedied any breach of this Lease at the date of the notice or at the end of the Term; or
- (b) the Lessee has persistently breached this Lease.

### 11.3 Renewed Lease

The new Lease will be on the same terms and conditions as this Lease except that:

- (a) it will commence on the day after this Lease expires;
- (b) the Lessor may make any changes to:
  - (i) reflect any variations made to this Lease during the Term;
  - (ii) include any term which the Lessor reasonably requires due to any change in the law; and
  - (iii) otherwise make the renewed Lease applicable to the Further Term; and
- (c) the renewed Lease will omit from Item 7 the Further Term first specified in Item 7 and omit any provision for renewal in the case of the last Further Term.

## 12. End of Lease and removal of Improvements

---

### 12.1 Acknowledgement

The parties acknowledge and agree that Improvements:

- (a) may have been constructed on the Premises (in whole or in part) prior to the Commencement Date;
- (b) are owned by the Lessee; and
- (c) remain at the risk of the Lessee.

### 12.2 Yielding up and removal of Improvements

- (a) At the Terminating Date or sooner determination of this Lease the Lessee will at the election of the Lessor (acting reasonably);

- (i) transfer ownership of all or part of the Improvements to the Lessor for \$1.00; or
  - (ii) remove all or part the Improvements and reinstate the Premises to a condition consistent with the condition of the Premises prior to any Improvements or Lessee specific alterations or Works made by or for the Lessee or its predecessors; and
  - (iii) deliver the Premises to the Lessor in good repair, order and condition having regard to the Premises as at the Commencement Date.
- (b) On or before the date that the Lessee must leave the Premises, the Lessee must:
  - (i) remove all rubbish from the Premises (together with all signs or advertisements affixed by, or on behalf of, the Lessee);
  - (ii) remove from the Premises all Works carried out;
  - (iii) return the Premises in a clean, tidy and safe condition and in the state of repair and condition as at the Commencement Date;
  - (iv) repair any damage to the Premises caused by the works;
  - (v) give the Lessor any keys, access cards and other security devices the Lessee and the Lessee's Agents have for the Premises.
- (c) If the Lessee fails to make good the Premises to the Lessor's satisfaction (acting reasonably), the Lessor may carry out any such works required and may recover the costs in doing so from the Lessee as a liquidated debt payable on demand.
- (d) Notwithstanding the termination of this Lease and vacation of the Premises, the Lessee's obligations to pay Rent and contributions to Outgoings will continue until the Lessee's obligations under this clause have been completed to the Lessor's satisfaction.
- (e) Any such fittings, fixtures, plant, equipment or other articles not removed by the Lessee either as of right or by requirement of the Lessor as aforesaid may (at the option of the Lessor and at the cost of the Lessee) be dealt with in accordance with Section 76 of the *Retail and Commercial Leases Act 1995*. Except as provided in that Section, the Lessor will not be responsible to the Lessee or any other person for any loss or damage resulting from such dealing.

## 13. GST

---

### 13.1 Interpretation

For the purposes of this clause 13:

- (a) **Act** means A New Tax System (Goods and Services Tax) Act 1999 (Cth) and any related tax impositions Act;
- (b) **GST** means any tax imposed by or through the Act on a taxable supply (without regard to any input tax credit); and
- (c) **taxable supply** means a taxable supply under the Act; and

except where the contrary intention appears, expressions used in this clause 13 have the meanings given to them in the Act.

### **13.2 Amounts exclusive of GST**

Unless expressly indicated otherwise and subject to clause 13.3, all amounts referred to in this Lease are exclusive of GST.

### **13.3 Increase of consideration**

Subject to clause 13.4, if GST is imposed on a taxable supply under this Lease then the amount or other consideration payable for that taxable supply will be increased by an amount equal to the GST imposed on that taxable supply and that amount will be payable at the same time and in the same manner as the consideration for that taxable supply.

### **13.4 Tax invoice**

A party is not obliged to pay any amount under clauses 13.3 and/or 13.5 unless and until it receives a tax invoice.

### **13.5 Reimbursement**

If this Lease requires a party to reimburse, indemnify or otherwise pay another party for any expense, loss or outgoing (**Reimbursable Expense**), the amount required to be paid by the first party will be the amount of the Reimbursable Expense inclusive of any GST paid when that expense, loss or outgoing was incurred less the amount of input tax credits (if any) to which the other party is entitled in respect of the Reimbursable Expense.

### **13.6 Adjustment**

A party which receives payment of an amount equal to the GST payable for a taxable supply made by it, agrees to provide the party which paid such amount with an adjustment note for any adjustment that arises from an adjustment event relating to the taxable supply within 14 days of becoming aware of that adjustment.

## **14. General**

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### **14.1 No waiver**

- (a) A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- (b) The exercise of a power or right does not preclude:
  - (i) its future exercise; or
  - (ii) the exercise of any other power or right.

### **14.2 Variation**

The variation or waiver of a provision of this Lease or a party's consent to a departure from a provision by another party will be ineffective unless in writing executed by the parties.

#### **14.3 Governing law and jurisdiction**

- (a) This Lease is governed by the laws of South Australia.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of South Australia.

#### **14.4 Further assurance**

Each party will from time to time do all things (including executing all documents) necessary or desirable to give full effect to this Lease.

#### **14.5 Counterparts**

This Lease may be executed in any number of counterparts each of which will be an original but such counterparts together will constitute one and the same instrument and the date of the Lease will be the date on which it is executed by the last party.

#### **14.6 Whole agreement**

In relation to the subject matter of this Lease:

- (a) this Lease is the whole agreement between the parties; and
- (b) this Lease supersedes all oral and written communications by or on behalf of any of the parties.

#### **14.7 No reliance on warranties and representations**

In entering into this Lease, each party:

- (a) has not relied on any warranty or representation (whether oral or written) in relation to the subject matter of this Lease made by any person; and
- (b) has relied entirely on its own enquiries in relation to the subject matter of this Lease.

This clause does not apply to warranties and representations that this Lease expressly sets out.

#### **14.8 Severance**

If any part of this Lease is invalid or unenforceable, this Lease does not include it. The remainder of this Lease continues in full force.

#### **14.9 No merger**

Nothing in this Lease merges, extinguishes, postpones, lessens or otherwise prejudicially affects any right, power or remedy that a party may have against another party or any other person at any time.

#### **14.10 Dealings**

- (a) The Lessee must not Deal with its rights or interest in this Lease except with the Lessor's prior written consent.

- (b) The Lessor may Deal with its rights and interest in this Lease and the Premises without the Lessee's consent.

#### 14.11 Notices

- (a) Any notice to or by a party to this Lease:
  - (i) must be in writing;
  - (ii) must be signed by the party giving it;
  - (iii) must be served on that party at the address specified in the Schedule or such other address that has been advised by the party as the address for service of notices under this Agreement or to the party's registered office recorded by the Australian Securities and Investments Commission.
- (b) A notice is deemed to have been duly served and received by the addressee:
  - (i) (in case of email) at the time of delivery to the recipient's last known email address which is the time generated by the sender's internet service provider provided that the sender does not receive a notice of email delivery failure from its internet service provider, unless that time is not on a business day (which for the purpose of this clause means a day which is not a Saturday, Sunday or public holiday in the place of receipt of the communication) or is after 5.00 pm on a business day, when that notice is taken to be received at 9.00 am on the next business day; or
  - (ii) (in case of fax) at the local time (in the place of receipt of the fax) which then equates to the time at which that fax is sent as shown on the transmission report produced by the machine from which that fax was sent and which confirms transmission of that fax in its entirety, unless that local time is not on a business day or is after 5.00 pm on a business day, when that notice is taken to be received at 9.00 am on the next business day; or
  - (iii) (in case of prepaid post) on the business day that is the fifth business day after the date of posting to an address within Australia, and on the sixth business day after the date of posting by airmail to an address outside Australia; or
  - (iv) (in case of delivery by hand) at the time of delivery at the address specified in the Schedule unless that delivery is made on a day that is not a business day or after 5.00 pm on a business day, when that notice is taken to be received at 9.00 am on the next business day.
- (c) For the purposes of this clause:
  - (i) a notice sent by email is a notice in writing; and
  - (ii) if the Lessor or the Lessee comprises more than one person, a notice is deemed to have been duly served if served on any one of them.

#### 14.12 Special Conditions

The covenants, provisions, terms and agreements contained in Item 10 (if any) apply to this Lease as if incorporated into the body of the Lease and if inconsistent with this Lease, will apply instead of the terms set out in the body of this Lease.

#### 14.13 Other matters

The Lessor enters into this Lease under Section 202 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 regulatory function or power.

### 15. Acknowledgement

---

#### 15.1 Acknowledgement

- (a) The Lessee acknowledges and agrees that it has inspected and satisfied itself about the suitability and condition of the Premises for its proposed usage before the Commencement Date.
- (d) The Lessee must not on or after the Commencement Date:
  - (i) make any objection;
  - (ii) claim any compensation; or
  - (iii) require the Lessor to carry out any works or repairs,for any existing or future defect in or want of repair in relation to the Premises.

### 16. Lessor's consent

---

If the Lessee requires the Lessor's consent to do something under this Lease, the consent:

- (a) may be granted at the Lessor's discretion (except as otherwise provided under this Lease);
- (b) may be granted with conditions;
- (c) must be in writing; and
- (d) may be given (or withheld as the case may be) by a delegated officer of the Lessor.

### 17. Lessor may reserve Premises

---

The Lessee acknowledges and agrees that the Lessor may reserve the Premises for its own use during the Term, PROVIDED THAT:

- (a) the Lessor gives the Lessee no less than 10 business days' prior written notice of the date(s) and time(s) that the Lessor wishes to use the Premises;
- (b) the Lessee has not otherwise committed to permit a third party to use the Premises at the same time as requested by the Lessor and, in the event that the Premises is not available at the date or time notified by the Lessor, the Lessee will use its best endeavours to agree a suitable alternative date and time with the Lessor (both parties acting reasonably and in good faith);

- (c) the Lessor may only reserve the Premises in accordance with this clause for purposes relating to community engagement and other uses connected with the Lessor's operations;
- (d) the Lessee must not charge the Lessor any fee for its use of the Premises in accordance with this clause; and
- (e) the Lessor's right to reserve the Premises is limited to a maximum of 12 days per annum.

## 18. Crown Land Conditions

---

- (a) The Lessor and the Lessee acknowledge and agree that:
  - (i) this is a lease of dedicated Crown Land and is subject to the provisions of the *Crown Land Management Act 2009* (SA);
  - (ii) pursuant to section 22 of the *Crown Land Management Act 2009* (SA) this lease will be of no effect without the Minister's consent;
  - (iii) the Minister granted consent to a Lease over this portion of land with SA Water on 4 February 2015 and confirmed on 7 November 2019 that further consent for lease 16.51.161 was not required as the proposed agreement is consistent with the dedicated purpose and consistent with Section 22 (5) of Crown Land Management Act 2009 (Amendments); and
  - (iv) the Minister's consent is subject to the conditions attached as Annexure C;
  - (v) the parties must comply with the Minister's Conditions and the Minister's Conditions will override the terms of this lease to the extent of any inconsistency.
- (b) In this clause 18 the following words have the corresponding meaning:
  - (i) **Minister** means the minister of the *Crown Land Management Act 2009* (SA) has been committed to pursuant to section 5 of the *Administrative Arrangements Act 1994* (SA).
  - (ii) **Minister's Conditions** means the Minister's Conditions referred to in clause 18(a)(iv).
  - (iii) **Crown Land** has the same meaning as given to that term in the *Crown Land Management Act 2009* (SA).

Schedule 1      Plan



Lease Area outlined in red above, with Common Area outlined in blue

# Signing Page

**LESSOR**

**THE COMMON SEAL of  
ALEXANDRINA COUNCIL ABN 20 785  
405 351** is fixed to this document in the  
presence of:

\_\_\_\_\_  
Signature of Mayor

\_\_\_\_\_  
Signature of CEO

\_\_\_\_\_  
Full name of Mayor

\_\_\_\_\_  
Full name of CEO

**LESSEE**

**SIGNED** by  
**MILANG OVAL INCORPORATED** in  
accordance with its constitution

\_\_\_\_\_  
Signature of President/Chairperson

\_\_\_\_\_  
Signature of Secretary

\_\_\_\_\_  
Full name (print)

\_\_\_\_\_  
Full name (print)

## Annexure A      Maintenance Schedule

### Building Maintenance Responsibilities

This schedule outlines the particular responsibilities of Council (as Lessor) and the Lessee where applicable over the land and buildings ('Premises') as defined in Schedule 1 and in accordance with Australian Standards and should be read in conjunction with the Lease Agreement.

#### 1. Building/s External (includes all associated outbuildings & sheds)

| ITEM                                                                                                                                                                                                                             | LESSEE                                                                                                                | COUNCIL                                                                                                          |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------|
| The Lessee has full responsibility for any building, shed or similar that is owned by the Lessee in its entirety including but not limited to windows, roof, guttering, painting, retaining walls, signs, security and lighting. |                                                                                                                       |                                                                                                                  |
| <b>Doors/entrances, locking mechanisms and access points.</b>                                                                                                                                                                    | Full responsibility                                                                                                   | Nil responsibility                                                                                               |
| <b>Flood lighting and similar</b>                                                                                                                                                                                                | Full responsibility                                                                                                   | Nil responsibility                                                                                               |
| <b>External pipes</b>                                                                                                                                                                                                            | Full responsibility                                                                                                   | Nil responsibility                                                                                               |
| <b>General cleaning</b>                                                                                                                                                                                                          | Full responsibility                                                                                                   | Nil responsibility                                                                                               |
| <b>Graffiti removal</b>                                                                                                                                                                                                          | Full responsibility                                                                                                   | Nil responsibility                                                                                               |
| <b>Bee, snake or pest removal</b>                                                                                                                                                                                                | Full responsibility                                                                                                   | Nil responsibility                                                                                               |
| <b>Waste water system (sheds septic tank)</b>                                                                                                                                                                                    | Maintain.<br>Full responsibility for interim pump outs and associated costs (other than the 5 year Council pump out). | Replace at end of natural life unless damage caused by Lessee neglect.<br><br>Council to pump out every 5 years. |
| <b>Toilets</b>                                                                                                                                                                                                                   | Maintain and repair minor damage                                                                                      | Replace at end of natural life if deemed appropriate by Council.                                                 |

## 2. Building Internal (includes Hall and all associated outbuildings & sheds)

| ITEM                                                                                                                                                                                                                                                                                                             | LESSEE                                                                                          | COUNCIL                                                                                                                                     |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------|
| The Lessee has full responsibility for any building, shed or similar that is owned by the Lessee in its entirety including but not limited to Emergency and exit lighting, smoke detectors, fire hose reels and hydrants, telecommunications, all services, air conditioning, paintings, floorings and fixtures. |                                                                                                 |                                                                                                                                             |
| <b>Water, sewer and gas piping</b>                                                                                                                                                                                                                                                                               | Full responsibility                                                                             | Nil responsibility                                                                                                                          |
| <b>Electrical equipment and appliances (e.g. Testing and tagging)</b>                                                                                                                                                                                                                                            | Full responsibility                                                                             | Nil responsibility                                                                                                                          |
| <b>Electrical services, switchboards, distribution boards, and power lighting circuits and meters.</b>                                                                                                                                                                                                           | Full responsibility                                                                             | Nil responsibility                                                                                                                          |
| <b>Water/waste services - associated fittings.</b>                                                                                                                                                                                                                                                               | Clean fittings, e.g. taps, toilet, sinks, replace washers.<br>Keep drains clear from blockages. | Replace at end of useful life unless damage caused by Lessee's negligence                                                                   |
| <b>Tapware, sinks, drains and toilets.</b>                                                                                                                                                                                                                                                                       | Maintain in toilet block, full responsibility for other buildings.                              | Replace at end of useful life unless damage caused by Lessee's negligence in toilet block only.<br>All other buildings – Nil responsibility |
| <b>Bee, snake or pest removal</b>                                                                                                                                                                                                                                                                                | Full responsibility                                                                             | Nil responsibility                                                                                                                          |
| <b>Graffiti removal</b>                                                                                                                                                                                                                                                                                          | Full responsibility                                                                             | Nil responsibility                                                                                                                          |

## 3. External Surfaces

| ITEM                                                 | LESSEE              | COUNCIL                                                                                             |
|------------------------------------------------------|---------------------|-----------------------------------------------------------------------------------------------------|
| <b>Fencing and gating (internal and oval)</b>        | Full responsibility | Nil responsibility                                                                                  |
| <b>External Fencing and gating around whole site</b> | Maintain and repair | Replace at end of useful life under damage caused by Lessee neglect as deemed necessary by Council. |
| <b>Carpark surfaces (if applicable)</b>              | Full responsibility | Nil responsibility                                                                                  |
| <b>Carpark Line marking (if applicable)</b>          | Full responsibility | Nil responsibility                                                                                  |
| <b>Driveway surfaces</b>                             | Full responsibility | Nil responsibility                                                                                  |

|                                     |                                                                                                                                                                                                                                         |                     |
|-------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|
| <b>Waste management and removal</b> | Full responsibility                                                                                                                                                                                                                     | Nil responsibility  |
| <b>Garden areas</b>                 | Maintain, irrigate, mow as applicable                                                                                                                                                                                                   | Nil responsibility  |
| <b>Tree branches, tree removal</b>  | <p>Full responsibility for tree maintenance/pruning (on prior consent of Council) in accordance with Clause 4.2.</p> <p>Full responsibility for tree/vegetation removal (on prior consent of Council) in accordance with Clause 4.2</p> | Nil responsibility  |
| <b>Entrance feature</b>             | Full responsibility                                                                                                                                                                                                                     | Nil responsibility  |
| <b>Common Areas</b>                 | Full responsibility, in equal parts with the Milang and District Historical Society Incorporated (as adjoining tenants) to maintain and repair the Common Area as required.                                                             | Nil responsibility. |

General Council enquiries, please email [property.officers@alexandrina.sa.gov.au](mailto:property.officers@alexandrina.sa.gov.au)

## Annexure B      Ownership of Improvements



| Improvement ID | Improvement Name       | Owner   |
|----------------|------------------------|---------|
| A              | Football Clubrooms     | Lessee  |
| B              | Equipment Shed         | Lessee  |
| C              | Cricket Nets           | Lessee  |
| D              | Old Netball Club       | Lessee  |
| E              | Netball Courts/Surface | Lessee  |
| F              | Cricket Clubrooms      | Lessee  |
| G              | Tractor/Mower Shed     | Lessee  |
| H              | Toilet block           | Council |
| I              | Oval fencing           | Lessee  |

## Annexure C Constitution

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## Annexure D Insurance

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