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Date / /2022

Community Services Land and Buildings Lease

Premises: Menzies Creek Hall
1 Menzies Road, Menzies Creek VIC 3159

Yarra Ranges Shire Council
and

##Insert

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Schedule

Item 1.	Council: (Clause 1)	Yarra Ranges Shire Council ABN 21 973 226 012 of 15 Anderson Street, Lilydale, Vic, 3140
Item 2.	Tenant: (Clause 1)	##Insert name of tenant entity, its ACN if a company, or its ABN if an incorporated association, and its address]
Item 3.	Land: (Clause 1)	The part of the land contained in certificate of title volume 7117 folio 305 and volume 8101 folio 402.
Item 4.	Premises: (Clause 1)	The whole of the Land and buildings, shown red cross hatched on the plan attached as Annexure B and known as Menzies Creek Hall, 1 Menzies Road, Menzies Creek VIC 3159.
Item 5.	Commencement Date: (Clause 1)	##insert commencement date]
Item 6.	Term: (Clause 1)	5 years
Item 7.	Further Term(s): (Clause 1)	Not applicable
Item 8.	Last date for exercising the Option for the Further Term: (Clause 3.2.1)	Not applicable
Item 9.	Rent : (Clause 1 & 4) per annum inclusive of GST payable: annually in advance, commencing on the Commencement Date, and then on each anniversary of the Commencement Date during the Term and any Further Term;
Item 10.	Percentage Rent Increase Dates: (Clause 1 and 5)	On each anniversary of the Commencement Date during the Term and any Further Term 3%
Item 11.	CPI Adjustment Dates: (Clause 1 & 6)	Not applicable]
Item 12.	Community Services Use: (Clause 1 & 14.1)	##Insert permitted use]
Item 13.	Hours of Use	## If no set hours are to be prescribed, insert 'Not applicable']
Item 14.	Special Conditions: (Clause 1 & 22.5)	As set out in Annexure A



Community Services Lease

The Council leases the Premises to the Tenant subject to the terms contained in this Lease.

This Lease is executed as a deed on the _____ day of _____ 2022

SIGNED on behalf of **YARRA RANGES**)
COUNCIL by an officer authorised to)
enter into this agreement in the presence)
of)

.....
Jo Colley
Executive Officer
Property & Facilities Management

Witness

Name of Witness

Signed Sealed and Delivered for and on)
behalf and with the authority of **[name of**)
tenant] by a member of the organisation)
having authority to enter into this agreement in)
the presence of:)

The common seal of
..... Inc ABN

..... President

..... Name of President

..... Secretary

..... Name of Secretary

1. Definitions

In this Lease unless expressed or implied to the contrary:

Act means the *Retail Leases Act 2003* (Vic).

Building Act means the *Building Act 1993* (Vic).

Building Maintenance Policy means the policy in Annexure C.

Building Regulations means the *Building Interim Regulations 2017* (Vic).

Commencement Date means the date specified in Item 5.

Community Service Use means the use specified in Item 12 which falls within the uses specified in the Determination.

Council means the Council specified in Item 1 and includes the Council's successors and assigns and where it is consistent with the context includes the Council's employees and agents.

Council's Fixtures means all fittings, fixtures, and chattels contained in the Premises at the Commencement Date or installed by the Council during the Term.

CPI means the Consumer Price Index - All Groups Melbourne or if this index is not available or is discontinued or suspended, such other index that represents the rise in the cost of living in Melbourne, as the Council reasonably determines.

CPI Adjustment Date means the date(s) (if any) described in Item 11.

Current CPI means the CPI number for the quarter ending immediately prior to the CPI Adjustment Date.

Determination means the Ministerial Determination dated 13 October 2014, a copy of which is attached at Annexure D.

Essential Safety Measure has the meaning given to that term in the Building Regulations.

Further Term means the further term(s) specified in Item 7.

Hours of Use means the hours of use specified in Item 13, or such other hours of use as the Council and the Tenant agree in writing from time to time.

Insolvency Event means in relation to a person, any of the following:

- (a) the person, being an individual, commits an act of bankruptcy;
- (b) the person becomes insolvent;
- (c) the person assigns any of its property for the benefit of creditors or any class of them;
- (d) a receiver, receiver and manager, administrator, controller, provisional liquidator or liquidator is appointed to the person or the person enters into a scheme of arrangement with its creditors or is wound up;

- (e) the holder of a Security Interest takes any step towards taking possession of or takes possession of any assets of the person or exercises any power of sale;
- (f) a judgment or order is made against the person in an amount exceeding \$10,000 (or the equivalent in any other currency) and that judgment or order is not satisfied, quashed or stayed within 20 Business Days after being made;
- (g) the person, being a corporation, is deregistered with the Australian Securities and Investments Commission;
- (h) any step is taken to do anything listed in the above paragraphs; and
- (i) any event that is analogous or has a substantially similar effect to any of the events specified in this definition in any jurisdiction.

Item means an item in the Schedule to the Lease.

Land means the land specified in Item 3.

Lease means this lease and includes all attachments and schedules.

Lease Particulars means the schedule of Items specified on the page at the front of this Lease.

Lettable Area(s) means the lettable area of the Land assessed for Rates and Taxes as determined by a surveyor engaged by the Council.

Local Government Act means the *Local Government Act 1989* (Vic).

OHS Act means the *Occupational Health and Safety Act 2004* (Vic).

OHS Law means the OHS Act, the OHS Regulations, and any other occupational health and safety law, regulation or by-law that applies to work being carried out on the Land.

OHS Regulations means the *Occupational Health and Safety Regulations 2017* (Vic).

Percentage Rent Increase Date means the date(s) (if any) specified in Item 10.

Premises means the premises specified in Item 4 and includes the Council's Fixtures.

Previous CPI means the CPI number for the quarter ending immediately prior to the last date that the Rent was reviewed, adjusted or increased, or the Commencement Date (whichever is the later).

Principal Contractor means the position of principal contractor referred to in Chapter 5 of the OHS Regulations.

Rates and Taxes means the rates, taxes, charges and levies specified in clause 7.1.

Rent means the amount specified in Item 9 as reviewed, adjusted or increased under this Lease.

Security Interest means:

- (a) any mortgage, pledge, lien, charge or other preferential right, trust arrangement, agreement or arrangement of any kind given or created by way of security, including a security interest (as defined in the *Personal Property Securities Act 2009*); and
- (b) any agreement to create or grant any arrangement described in paragraph (a).

Small Business Commissioner means the Small Business Commissioner referred to in the Act.

Special Conditions means the conditions referred to in Item 14.

Tenant means the Tenant specified in Item 2 and includes the Tenant's successors and assigns and where it is consistent with the context includes the Tenant's employees, contractors, agents, invitees and persons the Tenant allows in the Premises.

Tenant's Property means all property in the Premises including all fixtures and fittings owned or leased by the Tenant but excluding the Council's Fixtures.

Term means the term specified in Item 6 and includes any period of overholding.

Year means each year of the Term and the Further Term(s).

2. Compliance with *Local Government Act 1989*

Where applicable, the grant of this Lease is subject to the Council giving notice of its intention to grant this Lease and resolving to grant this Lease pursuant to the requirements of the Local Government Act.

3. Duration of the Lease

3.1 Term

This Lease is for the Term starting on the Commencement Date.

3.2 Option for a Further Term

If a Further Term is specified in Item 7, the Council will grant to the Tenant a new lease for the Further Term if the Tenant:

- 3.2.1 gives the Council written notice asking for a new lease, not earlier than 6 months or later than 3 months, before the end of the Term (the last date for exercising the option for the Further Term is specified in Item 8);
- 3.2.2 has remedied any breach of this Lease of which the Tenant has received written notice from the Council;
- 3.2.3 has not persistently defaulted under this Lease and the Council has given written notice of the defaults; and
- 3.2.4 complies with all reasonable requirements of the Council including where the Tenant is a corporation, procuring such directors or shareholders of the Tenant as may be reasonably required by the Council to execute the guarantee contained in this Lease.

The new lease for the Further Term will commence on the day after this Lease ends and contain the same terms and conditions as this Lease but with no option for a further term where the last option for the Further Term has been exercised. The Rent or the method to be used to review, adjust or increase the Rent during the Further Term is specified in clause 6.

3.3 Execution of New Lease for Further Term

The Tenant must execute the new lease for the Further Term and return the above to the Council within 14 days of receipt from the Council.

3.4 Overholding

If the Tenant continues in occupation of the Premises after the end of the Term, without objection by the Council, except under a lease arising from the valid exercise of an option to renew, the following provisions will apply:

- 3.4.1 the Tenant occupies the Premises subject to the same terms and conditions as contained in this Lease;
- 3.4.2 the Council or the Tenant may end this Lease during any period of overholding by giving 30 days written notice to the other party expiring at any time; and
- 3.4.3 the Council may increase the monthly rent by giving the Tenant one months' written notice.

4. Payment of Rent

The Tenant must pay the Rent to the Council in the manner specified by the Council in Item 9.

5. Percentage Rent Increase

5.1 Calculation of Adjustments

If a Percentage Rent Increase Date is specified in Item 10, the Rent on the Percentage Rent Increase Date is increased by the percentage specified in Item 10.

5.2 Payment of Increased Rent

The Tenant must pay to the Council the increased Rent, on and from the Percentage Rent Increase Date regardless of whether the Council has given a notice specifying the increased Rent or not.

6. CPI Adjustment of Rent

6.1 Calculation of adjustment

If a CPI Adjustment Date is specified in Item 11, the Rent on the CPI Adjustment Date will be adjusted to an amount equal to the Rent payable immediately prior to the CPI Adjustment Date multiplied by the Current CPI and divided by the Previous CPI.

6.2 Payment of adjusted Rent

On the next due date for the payment of the Rent, after the Tenant receives notice of the adjusted Rent from the Council, the Council and the Tenant must make any necessary adjustment to apply on and from the CPI Adjustment Date.

7. Outgoings

7.1 Rates and Taxes

The Tenant must pay to the Council, or the relevant authority:

- 7.1.1 local government rates and charges;
- 7.1.2 water rates and charges, including water usage charges;
- 7.1.3 sewerage and drainage rates and charges;
- 7.1.4 land tax (assessed on a single holding basis) except this cost is excluded where the Act applies to this Lease; and
- 7.1.5 all other rates, taxes, charges and levies assessed in connection with the Premises.

7.2 Proportion of Rates and Taxes

If any Rates and Taxes are not separately assessed in connection with the Premises, the Tenant must pay to the Council within 14 days of demand the proportion of the Rates and Taxes that the area of the Premises bears to the total Lettable Area assessed.

7.3 Receipt for Payment

The Tenant must provide to the Council receipts for any Rates and Taxes paid by the Tenant within 7 days of request by the Council.

8. Other expenses

8.1 Services

The Tenant must, within 14 days of demand pay for all services in connection with the Premises, including electricity, gas, water and telephone services.

8.2 Costs and Duty

The Tenant must pay to the Council within 14 days of demand:

- 8.2.1 Council's reasonable costs of preparing, negotiating and finalising this Lease, except where this amount is not recoverable where the Act applies to this Lease;
- 8.2.2 Council's cost of complying with the provisions of the Building Act and the Building Regulations in relation to any Essential Safety Measure, except to the extent that amount is not recoverable under the Act, the Building Act or the Building Regulations;
- 8.2.3 the cost of obtaining the Council's mortgagee's consent to this Lease (if required) except this amount is not recoverable where the Act applies to this Lease;
- 8.2.4 the Council's architects or contractor's fees payable pursuant to clause 11.4.2(d); and
- 8.2.5 the Council's costs (including charges on a solicitor-own client basis) incurred as a result of a breach of this Lease by the Tenant.

9. GST

9.1 Definitions

In this clause:

- 9.1.1 words and expressions that are not defined in this Lease but which have a defined meaning in the GST Law have the same meaning as in the GST Law;
- 9.1.2 **GST** means GST within the meaning of the GST Law and includes penalties and interest. If under or in relation to the *National Taxation Reform (Consequential Provisions) Act 2000* (Vic) or a direction given under section 6 of that Act, the supplier makes voluntary or notional payments, the definition of GST includes those voluntary or notional payments and expressions containing the term 'GST' have a corresponding expanded meaning; and
- 9.1.3 **GST Law** has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

9.2 GST Exclusive

Except as otherwise provided by this clause, all consideration payable under this Lease in relation to any supply is exclusive of GST.

9.3 Increase in Consideration

If GST is payable in respect of any supply made by a supplier under this Lease (**GST Amount**), the recipient will pay to the supplier an amount equal to the GST payable on the supply.

9.4 Payment of GST

Subject to clause 9.3 the recipient will pay the GST Amount at the same time and in the same manner as the consideration for the supply is to be provided under this Lease.

9.5 Tax Invoice

The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST Amount under clause 9.4.

9.6 Reimbursements

If this Lease requires a party to reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:

- 9.6.1 the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party is entitled; and
- 9.6.2 if the payment or reimbursement is subject to GST, an amount equal to that GST.

9.7 Adjustment events

If an adjustment event occurs in relation to a taxable supply under this Lease:

- 9.7.1 the supplier must provide an adjustment note to the recipient within 7 days of becoming aware of the adjustment; and
- 9.7.2 any payment necessary to give effect to the adjustment must be made within 7 days after the date of receipt of the adjustment note.

10. Payment requirements

10.1 No Deduction or Right of Set-Off

The Tenant must pay all amounts due under this Lease to the Council (including the Rent and Rates and Taxes) without deduction or right of set-off.

10.2 Interest and Deductions on Late Payments

10.2.1 Interest

Where payment due by the Tenant under this Lease is late, the Tenant must pay to the Council on demand interest at the rate per annum equal to the current rate fixed under section 2 of the *Penalty Interest Rates Act 1983* (Vic) on any money payable by the Tenant under this Lease and remaining unpaid after the due date. Interest will be computed from the date on which such payment became due.

10.2.2 Deductions

Where payment due by the Tenant under this Lease is late, Council may, in addition to its right under clause 10.2.1 and in its absolute discretion, deduct the amount outstanding (and any interest) from any monetary grant payable by Council.

10.3 Payment after Termination

The Tenant must:

10.3.1 make all payments due under this Lease; and

10.3.2 provide all information to the Council under this Lease to calculate any such payments,

even if this Lease has ended.

10.4 Method of payment

The Tenant must make all payments under this Lease in such manner as the Council reasonably requires, which may include by direct debit.

11. Repairs, Refurbishment and Alterations

11.1 Repairs and Maintenance

Unless the Building Maintenance Policy specifies otherwise, the Tenant must:

11.1.1 keep the Premises and the Tenant's Property clean and free from rubbish, store all rubbish in proper containers and have it regularly removed;

11.1.2 keep the Premises in the same condition as it was in at the date the Tenant first entered occupation of the Premises (fair wear and tear excepted) including repairing or replacing anything in the Premises (including all furnishings and floor coverings) which are damaged, worn or destroyed with items of at least the same quality;

11.1.3 paint and where appropriate paper any parts of the Premises previously painted or papered wherever reasonably required by the Council;

- 11.1.4 maintain in working order all plumbing, drains, pipes and sewers exclusively servicing the Premises;
- 11.1.5 pay the costs (if any) for the removal of waste and sewerage from the Premises;
- 11.1.6 maintain any gardens in the Premises in good condition well watered and free of weeds;
- 11.1.7 treat in a proper and professional manner (including polishing or varnishing as appropriate) all surfaces of the Premises (including wood, tile and metal surfaces) with the appropriate materials approved by the Council when reasonably required by the Council;
- 11.1.8 repair all defective lights, fluorescent tubes, windows, doors and locks in or exclusively servicing the Premises;
- 11.1.9 make good any damage caused to any adjacent property by the Tenant;
- 11.1.10 take all reasonable measures to ensure that any fair wear and tear to the Premises does not cause any loss or damage to the Premises, the building on the Land, or any person; and
- 11.1.11 give the Council prompt written notice of any material damage to the Premises or anything likely to be a risk to the Premises or any person in the Premises.

11.2 Building Maintenance Policy

The Tenant must observe and comply with the Building Maintenance Policy.

11.3 Electrical Equipment

The Tenant must ensure that all electrical equipment and appliances are inspected, tested and tagged in accordance with, and as often as required by, Australian Standards AS3760:2010 as amended from time to time.

11.4 Alterations to Premises

- 11.4.1 The Tenant must not carry out any alterations or works to the Premises, any services to the Premises or the Tenant's Property (**Works**) without the prior written consent of Council, which the Tenant acknowledges and agrees may be given or withheld at Council's absolute discretion.
- 11.4.2 The Tenant must ensure any Works are carried out:
 - (a) strictly in accordance with plans and specifications approved by the Council (and such approval may be given or withheld at Council's absolute discretion);
 - (b) by qualified tradespersons approved by the Council;
 - (c) to the Council's reasonable satisfaction and in accordance with the Council's reasonable requirements (including the Council's requirements as to the standard, type, quality, size and colour of any of the Tenant's Property);
 - (d) under the supervision of the Council's architect or consultant; and
 - (e) in accordance with all rules and requirements of any authorities having jurisdiction over the Premises.

- 11.4.3 The Tenant is not required to seek the Council's consent to making any alterations to the display of the Tenant's merchandise in the Premises.

11.5 Occupational health and safety

For the purposes of the OHS Law, the Tenant agrees that:

- 11.5.1 the Tenant has sole management and control of the Land and has sole responsibility for ensuring that the Land and the means of entering and leaving them are safe and without risks to health;
- 11.5.2 Council appoints the Tenant as Principal Contractor in respect of all Works to which an OHS Law applies;
- 11.5.3 the Tenant must carry out such Works in accordance with the requirements of the OHS Law; and
- 11.5.4 Council authorises the Tenant to exercise whatever authority is necessary for the Tenant to discharge the responsibilities of the appointment under clause 11.5.2.

11.6 Not Interfere with Services

The Tenant must not interfere, misuse or overload any services to the Premises, including electricity, gas and water.

11.7 Defacing Premises

The Tenant must not deface or damage the Premises (including drilling holes in the Premises) except where approved by the Council in accordance with clause 11.4.

11.8 Failure to Repair and Maintain

If the Tenant does not carry out any repairs, maintenance or other works required under this Lease within 14 days of receiving written notice from the Council, the Council may enter the Premises to carry out such repairs, maintenance and works at any reasonable time after giving the Tenant reasonable notice. The cost of all such repairs, maintenance and works must be paid by the Tenant to the Council on demand.

11.9 Repairs to Council's Fixtures

The Tenant must reimburse the Council for the cost of any repairs to the Council's Fixtures within 14 days of demand except to the extent that such costs are not recoverable under the Act, where the Act applies to this Lease.

12. Insurance

12.1 Public Liability, Consequential Loss and Glass Insurance

- 12.1.1 The Tenant must maintain insurance in the joint names of the Council and the Tenant with an insurer approved by the Council for:
- (a) public liability for the amount of \$20 million concerning 1 single event (or such greater sum as reasonably required by the Council);
 - (b) consequential loss insurance for an unlimited amount;
 - (c) any windows and any other glass in the Premises for the full replacement value; and

(d) such other risks as required or approved by the Council.

12.1.2 The Tenant acknowledges that the insurance set out in clause 12.1.1(a) must extend to volunteers engaging in duties directly related to the Tenant's activities.

12.2 Cross-liability Clause

The Tenant must ensure that the policies effected under clause 12.1 contain a cross-liability clause extending the policy so that the words 'the insured' are considered as applying to each party comprising the insured, as though a separate policy has been issued to each of the parties, in the same manner as if that party were the only party named as the insured.

12.3 Tenant's Property

The Tenant must insure the Tenant's Property for loss and damage from risks including fire and water damage for its full replacement value.

12.4 Payment and Production of Policies

The Tenant must pay all insurance premiums on or before the due date for payment and produce to the Council copies of the certificate of currency (which must include details of items covered by the policy) on or before each anniversary of the Commencement Date.

12.5 Not Invalidate Policies

The Tenant must:

12.5.1 not do anything which may make any insurance effected by the Council or the Tenant invalid, capable by being cancelled or rendered ineffective, or which may increase any insurance premium effected by the Council; and

12.5.2 pay any increase in the insurance premium caused by the Tenant's act, default or use of the Premises.

12.6 Reimburse Building Insurance

The Tenant must pay to the Council within 14 days of demand, the cost of any insurance premium to insure the Premises against damage or destruction.

12.7 Requirements by Insurer

The Tenant must comply with all reasonable requirements of the Council's insurer in connection with the Premises.

12.8 Other Insurance

The Tenant must, at its cost, effect and maintain:

12.8.1 workers' compensation insurance for its employees; and

12.8.2 if required by Council, professional indemnity, and directors and officers liability, insurance,

to the reasonable satisfaction of Council.

13. Release, Indemnity, Compensation and Liability

13.1 Release

The Tenant uses and occupies the Premises at its own risk and releases the Council from all claims resulting from any damage, loss, death or injury in connection with the Premises except to the extent that such claims arise out of the Council's negligence.

13.2 Indemnity

The Tenant must indemnify and hold harmless the Council against all claims resulting from any damage, loss, death or injury in connection with the Premises and the use and occupation of the Premises by the Tenant except to the extent that such claims arise out of the Council's negligence.

13.3 No Compensation

The Council is not liable to the Tenant for any loss or damage incurred by the Tenant due to:

- 13.3.1 any damage to the Premises;
- 13.3.2 the failure of the Council's Fixtures or any plant and equipment (including air conditioning and escalators) to operate properly;
- 13.3.3 the interruption or damage to any services (including electricity, gas or water) to the Premises; and
- 13.3.4 the overflow or leakage of water in the Premises,

except to the extent to which the Council is liable where the Act applies.

13.4 No Liability

The Tenant acknowledges and agrees that:

- 13.4.1 nothing in this Lease in any way limits, fetters or restricts the power or discretion of Council in the exercise of its statutory rights, duties or powers under the *Planning and Environment Act 1987* (Vic) or the Local Government Act or the exercise of any other statutory right, power or duty that Council may lawfully exercise; and
- 13.4.2 the Council will not be liable to the Tenant under this Lease (including but not limited to a breach of the covenant of quiet enjoyment or a derogation of the grant of this Lease) for any acts or omissions of the Council undertaken in any capacity including (but not limited to) in exercising any powers referred to in clause 13.4.1,

except nothing in this clause releases Council from any obligations it owes to the Tenant under this Lease in its capacity as the owner of the Premises.

14. Community Service Use

14.1 Permitted Use

The Tenant must use the Premises for the Community Service Use and not use the Premises for any other purpose.

14.2 No Warranty

The Tenant:

- 14.2.1 acknowledges that the Council does not represent that the Premises are suitable for the Community Services Use; and
- 14.2.2 must make its own enquiries as to the suitability of the Premises for the Community Services Use.

14.3 Illegal Purpose

The Tenant must not use the Premises for any illegal purpose or carry on an noxious or offensive activity on the Premises.

14.4 Hours of Use

- 14.4.1 The Tenant must only use the Premises for the Community Services Use during the Hours of Use.
- 14.4.2 The Tenant may use the Premises outside the Hours of Use for the purpose of taking deliveries, cleaning, maintenance and meetings only.

15. Other obligations concerning the Premises

15.1 Compliance with Laws

- 15.1.1 The Tenant must comply with all laws and any requirements of any authority (including the Yarra Ranges Planning Scheme) in connection with the Premises and the Tenant's use and occupation of the Premises including but not limited to, any requirements of the *Equal Opportunity Act 2010* (Vic), *Occupational Health and Safety Act 2004* (Vic), *Accident Compensation Act 1985* (Vic) and the *Workers Compensation Act 1958* (Vic) if applicable, except the Tenant will not be required to carry out any structural works unless the need for such works arises from:
 - (a) the negligent act or omission of the Tenant;
 - (b) the failure by the Tenant to comply with its obligations under this Lease; or
 - (c) the Tenant's use of the Premises.
- 15.1.2 The Tenant must comply with all Council policies, by-laws or regulations (as amended from time to time) as they apply to the Premises or the Community Services Use.

15.2 Licences and Permits

The Tenant must maintain all licences and permits required for the Tenant's use of the Premises and obtain the prior written consent of the Council before varying any licence or permit or applying for any new licence or permit.

15.3 Nuisance and Noise

- 15.3.1 The Tenant must not do anything in connection with the Premises which may:
 - (a) cause a nuisance or interfere with any other person; or
 - (b) be dangerous or offensive in the Council's reasonable opinion.

15.3.2 The Tenant must ensure that the level of noise emanating from the Premises:

- (a) does not cause a nuisance to other people; and
- (b) is kept at a level that complies with all laws and regulations, including without limitation the *Environment Protection (Residential Noise) Regulations 2008* (Vic).

15.4 Security

The Tenant must keep the Premises secure at all times when the Premises are not being used by the Tenant and must not cut additional keys or install any security system without the prior written consent of Council.

15.5 Signs

The Tenant must seek the prior written consent of the Council before displaying or affixing any signs, advertisements or notices to any part of the Premises where such signs, advertisements or notices are visible from outside the Premises.

15.6 No Vending Machines

The Tenant must not permit any vending or amusement machines in the Premises.

15.7 No Smoking

The Tenant must:

- 15.7.1 not permit the sale of tobacco products or tobacco related products;
- 15.7.2 not permit any smoking in the Premises; and
- 15.7.3 display 'no smoking' signs in the Premises if requested by the Council.

15.8 Vacation of Premises

- 15.8.1 The Tenant must not vacate the Premises for more than 30 continuous days without the prior written consent of Council.
- 15.8.2 The Tenant is not required to obtain the prior written consent of Council in accordance with clause 15.8.1 if the Premises are vacated for more than 30 continuous days due to school holidays.

15.9 Emergency Procedures

The Tenant must:

- 15.9.1 keep a first aid kit at the Premises and replenish it when required;
- 15.9.2 establish and display an evacuation plan, and test the utility of any such evacuation plan, at regular intervals during each Year; and
- 15.9.3 keep all emergency equipment fully replenished.

15.10 Heavy Objects and Inflammable Substances

The Tenant must not:

15.10.1 store any inflammable or explosive substances in the Premises unless required for the Community Service Use; or

15.10.2 store any heavy objects in the Premises or anything likely to damage the Premises.

15.11 Television and Radio

The Tenant must not install any televisions, radios, music systems or other equipment in the Premises which can be heard outside the Premises without obtaining the prior written consent of the Council.

15.12 Endanger Premises

The Tenant must not do or permit anything to be done in connection with the Premises which in the opinion of the Council may endanger the Premises or be a risk to any person or property.

15.13 Tenant's Employees

The Tenant must use all reasonable endeavours to ensure that the Tenant's employees, agents, contractors and invitees observe and comply with the Tenant's obligations under this Lease, where appropriate.

15.14 Playground Equipment

The Tenant must:

15.14.1 not construct or erect any fixed playground equipment at the Premises without Council's prior written consent; and

15.14.2 ensure that any playground equipment on the Premises complies with:

- (a) Australian Standard AS 4685: Playground equipment and surfacing;
- (b) Australian Standard AS 4422: Playground surfacing – Specification, requirements and test method;
- (c) Australian and New Zealand Standard AS/NZS ISO 31000: Risk management – Principles and guidelines; and
- (d) Australian Standard AS 3533 (for indoor playground equipment),

as amended from time to time, and industry best practice in design, provision and maintenance, including the undersurfacing component.

15.15 Animals

The Tenant must not allow any animals other than guide dogs to enter the Premises.

15.16 Auction Sales

The Tenant must not conduct or allow to be conducted any auctions, garage sales, car boot sales, fetes or similar activities without the prior written consent of Council (which consent must not be unreasonably withheld).

15.17 Tax Exempt

The Tenant must not undertake any activity or permit anything to be done which may cause it to cease being exempt from Commonwealth income tax under the *Income Tax Assessment Act 1997* (Cth).

15.18 Liquor Licence

The Tenant must:

- 15.18.1 seek the prior written consent of the Council before applying for any licence or permit under the *Liquor Control Reform Act 1998* (Vic) (**licence or permit**), or applying for any variation, removal, transfer, surrender or release of the licence or permit or nominating any person to be a licensee or permittee;
- 15.18.2 produce the licence or permit to the Council for inspection upon demand;
- 15.18.3 comply with any conditions of the licence or permit imposed by the Council;
- 15.18.4 comply with all conditions of the licence or permit and all laws relating to the licence or permit;
- 15.18.5 not allow the licence or permit to be cancelled or suspended;
- 15.18.6 renew the licence or permit and notify the Council in writing within 14 days of the renewal;
- 15.18.7 promptly notify the Council in writing if the licence or permit is cancelled or suspended or if the Tenant receives any notice, summons or fine in relation to the licence or permit;
- 15.18.8 indemnify the Council for any damages or costs incurred in relation to the licence or permit or a breach of this clause by the Tenant; and
- 15.18.9 surrender the licence or permit within 21 days of receiving a written notice from the Council, which the Council may give to the Tenant if the Tenant's use of the Premises is causing or likely to cause a nuisance to local residents.

15.19 Gambling

- 15.19.1 The Tenant must not apply for a licence or permit pursuant to the *Gambling Regulation Act 2003* (Vic) (**GRA**) without the prior written consent of Council, which may be withheld at the Council's absolute discretion.
- 15.19.2 The Tenant must provide a copy of any licence or permit issued pursuant to the GRA to Council.

15.20 Gaming Licence

The Tenant must seek the prior written consent of the Council before applying for any licence under the GRA. The Council may withhold its consent or give its consent subject to such terms and conditions as Council may determine in its absolute discretion.

15.21 Tenant Membership

The Tenant will:

- 15.21.1 permit residents and ratepayers of the municipality to become members of the Tenant upon satisfying the Tenant's reasonable requirements for membership;

- 15.21.2 upon demand, inform Council of the number of members of the Tenant; and
- 15.21.3 within 7 days of demand, provide all necessary documents to the Council to verify the membership of the Tenant.

15.22 Tenant Reporting Obligations

The Tenant must give Council:

- 15.22.1 within 60 days of the end of each financial year, an audited financial report, including a statement of assets and liabilities and profit and loss statement for the Tenant for that financial year; and
- 15.22.2 within 14 days of the Tenant's annual general meeting, a written report detailing:
 - (a) the activities conducted by the Tenant during the preceding year and, where applicable, a list of the groups which have used the Premises; and
 - (b) the office bearers appointed to the Tenant.

15.23 Determination Warranty and Obligations

- 15.23.1 The Tenant acknowledges that the Council has entered into this Lease on the basis that:
 - (a) the rent payable under this Lease is less than \$10,000 per annum;
 - (b) the Tenant is a body corporate that:
 - (i) exists for the purposes of, and uses the Premises for, providing or promoting community or similar facilities or objectives;
 - (ii) applies its profits in promoting its objects; and
 - (iii) prohibits payment of any dividend or amount to its members.
 - (c) and accordingly, pursuant to the Determination, the Act does not apply to this Lease.
- 15.23.2 The Tenant warrants that its constitution or rules of association prohibit payment of any dividend, benefit or other amount to its members.
- 15.23.3 The Tenant agrees and acknowledges that during the Term and any Further Term:
 - (a) in conducting the use permitted under this Lease, it must apply any profits that it receives in promoting its objects;
 - (b) it must not amend its rules or its constitution without the prior written consent of Council; and
 - (c) it must provide a copy of its constitution or rules to Council within 7 days of the Commencement Date.

15.24 Tenant's Employees

The Tenant must use all reasonable endeavours to ensure that the Tenant's employees, agents, contractors and invitees observe and comply with the Tenant's obligations under the Lease, where appropriate.

15.25 Fire Prevention and Control

The Tenant must comply with and ensure that the Tenant's employees, agent or contractors comply with:

15.25.1 the requirements of any authority in relation to the Premises;

15.25.2 any requirements or guidelines issued by the Insurance Council of Australia; and

15.25.3 the requirements of the Council from time to time,

in relation to fire prevention and control at the Premises.

16. Dealing with Interest in the Premises

16.1 No Parting with Possession

The Tenant must not give up possession of the Premises including assigning this Lease, subleasing the Premises or granting to any person a licence or concession in respect of the Premises, without the prior written consent of Council (which may be given or withheld in Council's absolute discretion).

16.2 Change in Shareholding

If the Tenant is a corporation (other than a corporation listed on any stock exchange in Australia) a change in the control of the corporation as existed at the Commencement Date (whether occurring at the one time or through a series or succession of issues or transfers) or a change in the holding of more than one-half of the issued share capital, either beneficially or otherwise, will be deemed to be an assignment of this Lease and the Tenant must seek the Council's prior written consent (which may be given or withheld in Council's absolute discretion).

16.3 Mortgage of Lease

The Tenant must not create any security over this Lease or the Tenant's Property.

17. Tenant's obligations at the end of this Lease

17.1 Tenant's Obligations

At the end of this Lease, the Tenant must:

17.1.1 vacate the Premises and give them back to the Council in a condition consistent with the Tenant having complied with its obligations under this Lease;

17.1.2 remove the Tenant's Property (including all signs and lettering) and reinstate the Premises in the condition the Premises were in prior to the installation of the Tenant's Property including making good any damage caused by the removal of the Tenant's Property; and

17.1.3 give to the Council all keys and other security devices for the purposes of obtaining access to the Premises.

17.2 Removal of Improvements

In removing the Tenant's Property from the Land, the Tenant must:

- 17.2.1 ensure that the surface of the Premises is restored to Council's reasonable satisfaction; and
- 17.2.2 follow all reasonable directions given by Council for the removal of the Tenant's Property, including (but not limited to) ensuring that all services to the Tenant's Property are disconnected.

17.3 Tenant's Property Left in Premises

Anything left in the Premises after 7 days of the end of this Lease will be deemed to be abandoned by the Tenant and will become the property of the Council and may be removed by the Council at the Tenant's cost and at the Tenant's risk.

18. Council's rights and obligations

18.1 Quiet Enjoyment

As long as the Tenant does not breach this Lease, the Council must not interfere with the Tenant's use and occupation of the Premises except as provided by this Lease.

18.2 Alterations to the Premises

The Council may carry out any works, alterations, renovation or refurbishment of the Premises which may include extending or reducing any buildings on the Premises.

18.3 Dealing with the Land

The Council may:

- 18.3.1 subdivide the Land or grant easements or other rights over the Land or the Premises except where it will unreasonably interfere with the Tenant's use and occupation of the Premises;
- 18.3.2 install, repair and replace pipes, cables and conduits in the Premises; and
- 18.3.3 use the roof and external walls of the Premises for any purposes the Council determines.

18.4 Entry by Council

The Council may enter the Premises at any reasonable time after giving the Tenant reasonable notice to:

- 18.4.1 inspect the condition of the Premises;
- 18.4.2 rectify any default by the Tenant under this Lease; or
- 18.4.3 carry out any inspection, repairs, maintenance, works or alterations in the Premises which the Council decides to or is required to carry out by any law or authority.

The Council must use all reasonable endeavours to cause as little disruption as possible to the Tenant's use of the Premises in exercising the Council's rights under this clause.

18.5 Emergency Entry

The Council may enter the Premises at any time without giving notice to the Tenant in an emergency.

18.6 Reletting and Sale

The Council may:

18.6.1 affix a 'For Lease' sign on the Premises and show the Premises to intending tenants at any reasonable time upon reasonable notice to the Tenant during the 6 months prior to the end of the Term (except where the Tenant has validly exercised an option for a Further Term); and

18.6.2 affix a 'For Sale' sign on the Premises and show the Premises to intending purchasers of the Premises at any reasonable time upon reasonable notice to the Tenant during the Term.

Any sign erected by the Council must not unreasonably interfere with the Tenant's use and occupation of the Premises.

19. Termination of Lease

19.1 Re-entry

The Council may re-enter the Premises and terminate this Lease if:

19.1.1 any part of the Rent is in arrears for 14 days (whether or not the Council has demanded payment);

19.1.2 the Tenant breaches this Lease and does not remedy the breach within 14 days of receipt of written notice from the Council; or

19.1.3 any funding, or service, agreement between Council and the Tenant ends.

19.2 Damages following Determination

If this Lease is terminated by the Council, the Tenant agrees to compensate the Council for any loss or damage the Council suffers arising in connection with the Tenant's breach of this Lease including the loss of the benefit of the Tenant performing its obligations under this Lease up to the expiration of the Term.

19.3 Essential Terms

The essential terms of this Lease are clauses 4, 7.1, 8.1, 8.2, 9, 11.1, 11.4, 12, 14.1, 15.1, 15.18, 15.20, 15.21, 15.22, 15.23, 15.25, 16.1 and the Tenant's obligations in the Special Condition. The breach of an essential term is a repudiation of this Lease.

19.4 No Deemed Termination

If the Tenant vacates the Premises, the Council will not be deemed to have terminated this Lease merely by the acceptance of keys from the Tenant, entry into the Premises for any purpose, or the showing of the Premises to prospective tenants or purchasers. This Lease will be deemed to continue until such time as the Council gives notice to the Tenant terminating this Lease, or otherwise agrees with the Tenant that this Lease is terminated.

20. Insolvency Event

20.1 If:

- 20.1.1 the Tenant is insolvent or admits or is presumed to be so;
- 20.1.2 an Insolvency Event occurs in relation to the Tenant;
- 20.1.3 an application or order is made for the winding up or dissolution of the Tenant, or a resolution is passed or any steps are taken to pass a resolution for a winding up or dissolution of the Tenant;
- 20.1.4 an administrator, provisional liquidator or person having a similar or analogous function under the laws of any relevant jurisdiction is appointed in respect of the Tenant, or any action is taken to appoint any such person and the action is not stayed, withdrawn or dismissed within fourteen days; or
- 20.1.5 the Tenant enters into, or takes any action to enter into, an arrangement (including a scheme of arrangement or deed of company arrangement), composition or compromise with, or an assignment for the benefit of, all or any class of its creditors or members or a moratorium involving any of them,

then an act of insolvency has occurred, and the Landlord may then terminate this Lease at any time by giving the Tenant 14 days written notice.

21. Destruction or Damage of Premises

21.1 Reduction in Rent

If the Premises, or any part of the Premises, are destroyed or damaged to the extent that the Tenant cannot use or have access to the Premises (except if the Tenant causes or contributes to the destruction or damage, or the Council's insurer is not legally required to reinstate the Premises because the Tenant caused or contributed to the destruction or damage) then the Council will reduce the Rent and any outgoings by a reasonable amount depending upon the nature and extent of destruction or damage until the Tenant can use or have access to the Premises.

21.2 Reinstatement of Premises

If the Premises or any part of the Premises are destroyed or damaged, the Council may, within 6 months from the date of such damage or destruction, give notice to the Tenant:

- 21.2.1 terminating this Lease, where the Council considers that the damage or destruction is such that repairing it is impracticable or undesirable; or
- 21.2.2 that the Council will commence reinstatement of the Premises to a condition where the Tenant can use or have access to the Premises,

however the Council does not have to reinstate the Premises.

21.3 Tenant's Right of Termination

Where the Tenant has not caused or contributed to the damage or destruction of the Premises and the payment of the insurance for the Premises is not refused due to the act or default of the Tenant, the Tenant may give written notice to the Council terminating this Lease where the Council does not:

21.3.1 give notice to the Tenant pursuant to clause 21.1; or

21.3.2 commence reinstatement within 12 months of the date of damage or destruction.

Upon termination of this Lease, each party is released from all further obligations under this Lease except nothing in this clauses releases either party from any breach of this Lease arising prior to the date of termination.

21.4 No Compensation

The Tenant acknowledges that if the Premises are destroyed or damaged, the Tenant is not entitled to receive any compensation from the Council, except this clause does not apply where the Act applies to this Lease.

22. General

22.1 Notices

Any notice required to be served under this Lease must be in writing and must be served by post, facsimile transmission or hand delivered to:

22.1.1 the Tenant at its address set out in this Lease, the Tenant's registered office address, the Premises, or the last known address of the Tenant; and

22.1.2 the Council at its address set out in this Lease or any other address notified in writing to the Tenant by the Council.

22.2 Time of Service

A notice or other communication is deemed served:

22.2.1 if served personally or left at the person's address, upon service;

22.2.2 if posted, 2 business days after posted;

22.2.3 if served by facsimile transmission, subject to the next sub-clause, at the time indicated on the transmission report produced by the sender's facsimile machine indicating that the facsimile was sent in its entirety to the addressee's facsimile machine; and

22.2.4 if received after 6.00 pm in the place of receipt or on a day which is not a business day, at 9.00 am on the next business day.

22.3 Entire Understanding

This Lease and the Disclosure Statement (if any) contains the entire understanding between the parties as to the subject matter contained in it. All previous agreements, representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter are superseded by this Lease and have no effect.

22.4 Waiver

If the Council accepts the Rent or any other monies under this Lease (before or after the end of this Lease) or does not exercise or delays exercising any of the Council's rights under this Lease, it will not be a waiver of the breach of this Lease by the Tenant or of the Council's rights under this Lease.

22.5 Special Conditions

This Lease is subject to the Special Conditions. The Special Conditions override any inconsistent provisions in this Lease.

22.6 Council's Consent

If Council's consent is required under this Lease, Council may withhold or give its consent in its absolute discretion and, if it gives its consent, it may give its consent subject to such conditions as, in its absolute discretion, it requires.

23. Interpretation

23.1 Governing Law and Jurisdiction

This Lease is governed by and is to be construed in accordance with the laws of Victoria. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria and waives any right to object to proceedings being brought in those courts.

23.2 Persons

In this Lease, a reference to a person includes a firm, partnership, association, corporation or other corporate body.

23.3 Joint and Several

If a party consists of more than 1 person, this Lease binds them jointly and each of them severally.

23.4 Legislation

In this Lease, a reference to a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them.

23.5 Clauses and Headings

In this Lease:

- 23.5.1 a reference to a clause, schedule or annexure is a reference to a clause, schedule or annexure in or to this Lease; and
- 23.5.2 headings and sub-headings are inserted for ease of reference only and do not effect the interpretation of this Lease.

23.6 Severance

In this Lease:

- 23.6.1 if a provision is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable; and
- 23.6.2 if it is not possible to read down a provision as required in this clause, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in this Lease.

23.7 Number and Gender

In this Lease, a reference to:

- 23.7.1 the singular includes the plural and vice versa; and
- 23.7.2 a gender includes the other genders.

23.8 Exclusion of Statutory Provisions

The following statutory provisions are excluded from this Lease:

- 23.8.1 Section 144 of the *Property Law Act 1958* (Vic); and
- 23.8.2 Division 7 of Part IV of the *Transfer of Land Act 1958* (Vic).

Annexure A

Special Conditions

Hire Agreement

1.1 For the purposes of this Special Condition:

Hire Agreement means a hire agreement between the Tenant and a third party to temporarily use the Premises on the terms and conditions set out in this Lease.

Hire Fee means the fee payable by the third party to the Tenant under the Hire Agreement for the use of the Premises.

1.2 The Tenant may only enter into a Hire Agreement if it obtains the prior written consent of the Council to the proposed Hire Agreement.

1.3 The Council and the Tenant acknowledge and agree that the Hire Agreement may provide for the Tenant to charge a Hire Fee provided that the Tenant applies the Hire Fee towards maintaining the Premises, or promoting its objects in accordance with clause 15.23 of this Lease.

This Special Condition is an essential term of this Lease.

2. Use of Common Areas

2.1 Definitions

In this Special Condition:

Common Area means the car park and play ground adjoining the Menzies Creek Hall,

2.2 Grant of Licence

The Council grants the Tenant a licence to use the Common Area for the Term starting on the Commencement Date:

2.2.1 in common with the Council and all persons authorised by the Council;

2.2.2 in accordance with the terms and conditions of this Lease, and the terms contained in Special Condition 2.3; and

2.2.3 subject to Special Condition 2.4.

2.3 Terms of Licence

The Tenant must:

2.3.1 only use the Common Area for the purposes of car parking and access to the Premises and play ground;

2.3.2 keep the Common Area clean and tidy;

2.3.3 not obstruct the Common Area;

This Special Condition 2.3 is an essential term of this Lease.

2.4 End of Licence

The licence granted to the Tenant pursuant to this Special Condition automatically terminates when this Lease ends.

##INSERT THE FOLLOWING WHERE THE HALL IS RUN BY A NON FOR PROFIT COMMITTEE OF MANAGMENT

3. Scope of the Committee's Delegated Responsibilities

As the delegated manager of Hall, the Committee's role is to administer the use of the hall by the community in accord with;

- the conditions outlined in this Lease Agreement and
- Council's Public Hall Committee of Management Handbook.

3.1 Activities outside the Committee's delegated responsibilities

Activities which fall outside the Committee's responsibilities as the delegated manager of the hall would not be covered through the Special Endorsement to Council's insurance cover and would require separate public liability insurance cover for the Committee as well as for any associated events.

Examples of such activities include;

- Fund raising activities which are not specifically and solely for the purpose of generating funds for the upkeep of the hall.
- Entering sponsorship arrangements without specific Council approval.

NB. Where there is any question as to whether an activity is covered under the "Special Endorsement" to Council's insurance policy as set out in clause 12.1 of this Lease, the Committee should seek advice from Council before agreeing to or commencing the activity.

3.2 Public liability insurance cover for community use of hall facilities

All users of hall facilities must have public liability insurance cover for a minimum of \$20,000,000.

Eligible casual community users can access coverage under Council's policy by payment of an insurance levy (\$28.00 for the 2022/23 year but subject to adjustment from time to time).

In all other circumstances the hirer of the hall must provide evidence of their own public liability insurance cover for a minimum of \$20,000,000. The committee of management is required to keep a copy of the certificate of currency of the insurance policy for the duration of the lease agreement. Groups falling into this category would include regular hirers, providers of instructed activities, commercial users, and community service groups e.g. Rotary Clubs, Probus and Church Groups.

3.3 Management of high risk events

Experience has demonstrated that the hiring of public halls for 21st and below birthday parties can be high risk events, and it is recommended that these applications are managed carefully and that a \$1,000 bond is required in advance of the event.

Costs associated with repairs of damage caused by or associated with the event will be deducted from the bond.

In the circumstance when there is a breach of the usage arrangements by the hirer the shire may direct that the whole bond be retained.

3.4 Excluded events

Applications to conduct the following events in the hall are to be rejected:

- Rave parties
- Events involving fireworks
- After-deb and end of school parties
- Other events likely to bring Council into disrepute.

[[[INSERT THE FOLLOWING WHERE THE PERMITTED USE IS FOR AN 'EDUCATION AND CARE' SERVICE - EG. KINDERGARTENS, PRESCHOOL PROGRAMS, CHILD CARE CENTRES AND OUTSIDE SCHOOL HOURS SERVICES PROVIDING EDUCATION AND CARE FOR CHILDREN UNDER 13]]]

4. Education and Child Care Approvals and Compliance

4.1 Definitions

For the purposes of this Special Condition:

Education and Care Act means the *Education and Care Services National Law Act 2010* (Vic);

Education and Care Regulations means all regulations made under the Education and Care Act;

Education and Care Service has the meaning given to that term in the Education and Care Act;

Nominated Supervisor has the meaning given to that term in the Education and Care Act;

Regulatory Authority has the meaning given to that term in the Education and Care Act .
As at the Commencement Date, the Regulatory Authority is the Secretary of the Department of Education and Training;

Serious Incident has the meaning given to that term in section 174 of the Education and Care Act; and

Show Cause Notice has the meaning given to that term in the Education and Care Act.

Words and expressions that are not defined in this Lease but which have a defined meaning in the Education and Care Act or the Education and Care Regulations have the same meaning as in the Education and Care Act or the Education and Care Regulations.

4.2 Application of Special Condition

This Special Condition applies if the Community Services Use involves the conduct of an Education and Care Service at the Premises.

4.3 Approval Requirements

Without limiting any of the Tenant's obligations under this Lease, the Tenant must obtain and maintain throughout the Term, all approvals required to engage in the Community Services Use at the Premises, including, without limitation:

- 4.3.1 a provider approval to provide Education and Care Services, as required pursuant to Part 2 of the Education and Care Act (**Provider Approval**); and

- 4.3.2 an appropriate service approval under Part 3 of the Education and Care Act reflecting nature of the Community Services Use (**Service Approval**).

4.4 Tenant's Obligations

The Tenant must, at all times:

- 4.4.1 provide a copy of the Service Approval and the Provider Approval to the Council, on demand;
- 4.4.2 ensure that a Nominated Supervisor is appointed for the Education and Care Service;
- 4.4.3 display on a visible part of the Premises, the prescribed information in accordance with section 172 of the Education and Care Act; and
- 4.4.4 comply with the Service Approval, the Provider Approval, the Education and Care Act and the Education and Care Regulations, including, without limitation, ensuring that:
- (a) all children being educated and cared for by the Tenant are adequately supervised;
 - (b) children are not subject to any form of corporal punishment or discipline that is unreasonable in the circumstances;
 - (c) every reasonable precaution is taken to protect children from harm and from any hazard likely to cause injury; and
 - (d) prescribed staffing levels are maintained at all times.

4.5 Notification to the Council

- 4.5.1 The Tenant must notify the Council of any complaint which the Tenant is required to report to the Regulatory Authority under the Education and Care Act, within 24 hours of reporting the complaint to the Regulatory Authority.
- 4.5.2 The Tenant must notify the Council of any Serious Incident which the Tenant is required to report to the Regulatory Authority under the Education and Care Act, within 24 hours of notifying the Regulatory Authority of the Serious Incident.
- 4.5.3 The Tenant must immediately notify Council if it is charged with, or convicted of, an offence under Part 6 of the Education and Care Act.
- 4.5.4 The Tenant must immediately notify the Council if a Show Cause Notice is served on the Tenant by the Regulatory Authority, or if the Tenant's Service Approval or Provider Approval is suspended (even if voluntarily), cancelled or surrendered.

- 4.6 This Special Condition is an essential term of this Lease.

[##INSERT THE FOLLOWING WHERE THE PERMITTED USE IS FOR AN 'EDUCATION AND CARE' SERVICE - EG. KINDERGARTENS, PRESCHOOL PROGRAMS, CHILD CARE CENTRES AND OUTSIDE SCHOOL HOURS SERVICES PROVIDING EDUCATION AND CARE FOR CHILDREN UNDER 13]

5. Continued operation of childcare or education business

- 5.1 For the purposes of this Special Condition:

Approvals means any licence, permit, registration or approval associated with the Tenant's use of the Premises for the Community Services Use.

5.2 The Tenant must:

- 5.2.1 continue to operate the Tenant's business at the Premises during the whole Term (other than those periods as agreed with Council);
- 5.2.2 at all times (excluding public holidays and any other days agreed with Council) keep the Premises open for business, to the standards required under this Lease;
- 5.2.3 manage and conduct the business operating from the Premises in an efficient and business-like manner; and
- 5.2.4 not do anything which would result in the Approvals being removed, cancelled, suspended or revoked or in any material way depart from the ordinary course of day-to-day operation of the business,

until the end of the Lease.

###INSERT THE FOLLOWING WHERE THE PERMITTED USE IS FOR AN 'EDUCATION AND CARE' SERVICE - EG. KINDERGARTENS, PRESCHOOL PROGRAMS, CHILD CARE CENTRES AND OUTSIDE SCHOOL HOURS SERVICES PROVIDING EDUCATION AND CARE FOR CHILDREN UNDER 13]

6. Transfer of Approvals for childcare or education business

6.1 For the purposes of this Special Condition:

Approvals means any licence, permit, registration or approval associated with the Tenant's use of the Premises for the Community Services Use.

6.2 At the end of the Lease, the Tenant must, at no cost to Council:

- 6.2.1 transfer to Council or a third party nominated by Council, any Approvals (whether under the Education and Care Act, the Education and Care Regulations or any other relevant legislation or regulation);
- 6.2.2 do all things necessary including delivering to Council without delay:
 - (a) any documents or instruments as may properly be required; and
 - (b) any consents required;

to allow Council or a third party nominated by Council to obtain a transfer of any Approvals.

Without limiting any other provision in this Lease, the Tenant must not vacate the Premises or cease to operate its business from the Premises unless and until Special Condition 6.2 has been complied with to the satisfaction of Council.

###INSERT THE FOLLOWING WHERE THE TENANT IS USING THE PREMISES FOR ACTIVITIES WHICH ARE LIKELY TO INVOLVE REGULAR DIRECT CONTACT WITH CHILDREN]

7. Working with Children Checks

7.1 This Special Condition applies if the Tenant's activities at the Premises involve persons engaged in 'child related work' within the meaning of the *Working with Children Act 2005* (Vic) (**WWCA**).

- 7.2 Without limiting the Tenant's obligations concerning compliance with all laws and requirements of any authority in connection with the Premises and the Tenant's use and occupation of the Premises, the Tenant must:
- 7.2.1 ensure that all employees and volunteers who are required to apply for a Working with Children Check (**WWC**) under the WWCA have done so, before working with children at the Premises;
 - 7.2.2 provide a copy of the WWC card of each of the Tenant's employees and volunteers working at the Premises to Council, on demand;
 - 7.2.3 ensure that any employee or volunteer that is given a negative notice (within the meaning given to that term in the WWCA) does not work with children at the Premises; and
 - 7.2.4 subject to Special Condition 7.3, ensure that the information in any WWC of the Tenant's employees and volunteers which is provided to the Council, is kept confidential.
- 7.3 The Tenant agrees that Council may disclose the information in any WWC of the Tenant's employees and volunteers for the purpose of administering or enforcing this Lease or if required by law.
- 7.4 This Special Condition is an essential term of this Lease.

[##INSERT THE FOLLOWING WHERE THE TENANT IS ENGAGED IN ACTIVITIES THAT INVOLVE CHILDREN – EG. SCHOOLS, CHILDREN'S SERVICES, SPORTS CLUBS].

[NOTE: SCHEDULES 1 AND 2 OF THE *CHILD WELLBEING AND SAFETY ACT 2005 (VIC)* LIST ENTITIES TO WHICH THE CHILD SAFE STANDARDS APPLY]

8. Child Safe Standards

- 8.1 This Special Condition applies if the Tenant is:
- 8.1.1 an applicable entity within the meaning of the *Child Wellbeing and Safety Act 2005* (Vic); and
 - 8.1.2 not otherwise exempt from the requirements of that Act.
- 8.2** For the purposes of this Special Condition, **Child Protection Toolkit** means the document of that name published by Our Community Pty Ltd, January 2016, ISBN 978–1–876976–58–3.
- 8.3 The Tenant must comply with the Child Safe Standards published pursuant to the *Child Wellbeing and Safety Act 2005* (Vic) (as amended from time to time).
- 8.4 The Tenant acknowledges that the Child Safe Standards can be found at the website <http://www.education.vic.gov.au/about/programs/health/protect/Pages/default.aspx> (as amended from time to time) and, for the purposes of this Special Condition, the Tenant acknowledges having received a copy of the Child Safe Standards.
- 8.5 Commencing no later than 6 months after the Commencement Date until the end of the Term, the Tenant must, using the Child Protection Toolkit:
- 8.5.1 implement a child-safe policy or statement of commitment to child safety;
 - 8.5.2 put in place a code of conduct that establishes clear expectations for appropriate behaviour with children;

8.5.3 codify mandatory and voluntary processes for responding to and reporting suspected child abuse; and

8.5.4 implement such other policies and practices as are relevant and appropriate.

8.6 This Special Condition is an essential term of this Lease.

Annexure B

Plan



Annexure C

Building Maintenance Policy

This schedule will apply notwithstanding alternative provision is contained in the lease.

	Tenant	Council	Comments
Infrastructure			
Structure			
Roof		Full Maintenance	
Gutter and Spouting		Full Maintenance	
External and Internal Walls	Maintain	Replace	
Floor	Maintain	Replace	
Stumps, footing etc	Maintain	Replace	
Services			
Electrical wiring	Maintain	Replace	
Plumbing (including sewerage)	Maintain	Replace	
Sub surface drain pipes	Maintain	Replace	
Water Supply	Maintain from meter	Full Maintenance to meter & Replace from Meter	<i>Tenant is responsible for full maintenance of any water tanks installed by the tenant.</i>
Drainage service pits	Maintain	Replace	<i>Tenant to keep pit free of debris and inspect regularly.</i>
Fittings			
Air conditioning and/ or heating	Full Maintenance		<i>Inspect/service annually</i>
Hot Water Service	Full Maintenance		
Curtains/ drapes/ blinds	Full Maintenance		
Electrical fittings and lights	Full Maintenance		
External Lighting	Full Maintenance		<i>Council to replace external security lighting.</i>
Plumbing fittings (toilet, sink, taps etc)	Full Maintenance		
Floor surfaces and coverings	Full Maintenance		
Fly screens	Full Maintenance		
Plate glass	Full Maintenance		
Windows	Full Maintenance		<i>Council to replace external glass if damaged out of hours / vandalism.</i>
Intercom	Full Maintenance		
Keys and locks	Maintain	Replace	<i>Requires Council authority</i>
Internal wall surfaces (paint, wallpaper and tiling, etc)	Full Maintenance		<i>Paint on 10 year cycle</i>
External wall surfaces	Maintain	Replace	<i>Paint on 10 year cycle</i>
Skylight		Full Maintenance	
Appurtenant fittings or fixtures	Full Maintenance		
Doors	Maintain	Replace <i>External doors only</i>	

	Tenant	Council	Comments
Security system	Full Maintenance		
Fixed whitegoods (eg stove)	Full Maintenance		
Other			
Retaining Walls, Outdoor steps etc.	Maintain	Replace	
Car park & Driveway	Full Maintenance for sole use	Full maintenance for public use	
Signage	Full Maintenance	Full maintenance for corporate signage	
Fences & Gates		Full Maintenance	<i>Inspect annually</i>
Open Space			
Grassed areas	Full Maintenance		<i>Assess fortnightly</i>
Trees		Full Maintenance	<i>Council approval to be sought prior to any major tree maintenance</i>
Pest Control	Undertake		
Waste removal	Undertake		<i>Weekly</i>
Play ground		Full Maintenance	<i>Annual safety inspection to Australian Standard for playgrounds</i>
Insurance			
Damage caused by vandalism, storm damage or any other insured risk	Undertake if less than \$250	Undertake if greater than \$250	
Public Liability		Undertake	<i>Committee covered under Council's Broadform Liability Policy</i>
Plate Glass	Undertake		
Building Insurance		Undertake	
Contents Insurance for all equipment, fixtures and fittings	Undertake		
Essential Services			
Fire extinguishers / fire blankets	Replace if discharged or stolen	Full Maintenance	<i>Inspect and maintain to Australian Standard</i>
Fire service levy		Full Maintenance	
Emergency exits		Full Maintenance	<i>Inspect and maintain to Australian Standard</i>
Smoke detectors	Full Maintenance		

Definitions:

Maintain:	Clean and maintain. Keep in good condition. Inspect. Service. Maintain to Australian Standard
Replace:	Fix if broken. Replace or Repair.
Full Maintenance:	Clean, maintain, repair, replace.
Blank:	No Maintenance
Undertake:	Carry out specified activity

The comments column is provided for the benefit of the tenant. This column may be used to clarify the maintenance responsibilities that relate to a particular site.

The replacement of certain items may be dependent upon budget provisions.

Approved contractors

If the tenant is required to engage contractors to perform maintenance tasks for which the tenant is responsible, Council, as landlord, will only approve the use of contractors who are qualified, authorised &/or licensed in accordance with relevant standards and codes.

Annexure D

Ministerial Determination



Victoria Government Gazette

No. S 362 Monday 13 October 2014
By Authority of Victorian Government Printer

Retail Leases Act 2003

DETERMINATION UNDER SECTION 5

Premises Not Constituting Retail Premises

I, Russell Northe MP, Minister for Small Business, and Minister responsible for administering the **Retail Leases Act 2003** (the Act), determine under section 5(1)(e) of the Act –

1. The following kinds of leases are leases of premises to which section 4(2)(h) of the Act applies, being premises which are not ‘retail premises’:
 - (a) A lease of premises under which the rent payable is not greater than \$10,000 per annum and under which the premises are used wholly or predominantly for any one or more of the following purposes –
 - (i) public or municipal purposes;
 - (ii) charitable purposes;
 - (iii) the education and training of persons to be ministers of religion;
 - (iv) as a residence of a practising minister of religion;
 - (v) as a club for or a memorial to persons who served in the First or Second World War or in any other war, hostilities or special assignment referred to in the **Veterans Act 2005**;
 - (vi) the purposes of the Returned Services League of Australia;
 - (vii) the purposes of the Air Force Association (Victoria Division); or
 - (viii) the purposes of the Australian Legion of Ex-Servicemen and Women (Victorian Branch).
 - (b) A lease of premises under which the rent payable is not greater than \$10,000 per annum and under which the premises are used wholly or predominantly by a body or association, whether incorporated or unincorporated –
 - (i) that exists for the purposes of (and which uses the premises for) providing or promoting community, cultural, sporting, recreational or similar facilities or activities or objectives; and
 - (ii) that applies its profits in promoting its objects; and
 - (iii) that prohibits the payment of any dividend or other amount to its members –

whether or not the premises are occupied by the tenant, held by the tenant in trust for the occupant or sub-leased by the tenant to another person.
2. The Ministerial Determination dated 22 July 2008 made by the Minister for Small Business and notified in the Victoria Government Gazette No. S209 on Thursday 24 July 2008 (the former Determination) is revoked.
3. The revocation of the former Determination by this Determination does not affect the operation of the former Determination in relation to leases to which the former Determination applied. Accordingly, any leases to which the former Determination applied, that was in force immediately before 31 December 2014, continues to be excluded from the definition of *retail premises* in section 4 of the **Retail Leases Act 2003** until –
 - (a) the lease expires or is terminated under the Act; or
 - (b) it is no longer possible, under the terms of the lease, for the tenant to exercise an option to renew the lease.

This Ministerial Determination comes into effect on 1 January 2015.

Dated 6 October 2014

THE HON. RUSSELL NORTHE MP
Minister for Small Business