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Lease

Premises: Melton Country Club, Reserve Road

Melton City Council
ABN 22 862 073 889
and

Essendon Football Club
ACN 004 286 373

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Schedule

Item 1.	Council: (Clause 1)	Melton City Council ABN 22 862 073 889 of 232 High Street, Melton, Victoria 3337
Item 2.	Tenant: (Clause 1)	Essendon Football Club. ACN 004 286 373 of 275 Melrose Drive, Melbourne Airport, Victoria 3045
Item 3.	Land: (Clause 1)	The land contained in certificate of title volume 9189 folio 074
Item 4.	Premises: (Clause 1)	That part of Land and the buildings thereon as shown cross-hatched in yellow on the Plan and known as Melton Country Club, Reserve Road, Melton
Item 5.	Commencement Date: (Clauses 1)	1 December 2018
Item 6.	Expiry Date: (Clause 1)	31 November 2022
Item 7.	Term: (Clauses 1 & 4.1)	Four (4) years
Item 8.	Further Term(s): (Clauses 1 & 4.3)	Five (5) Further Terms of Five (5) years each
Item 9.	Last date for exercising the Option for the Further Term: (Clause 4.3.1)	First Further Term: 31 August 2022 Second Further Term: 31 August 2027 Third Further Term: 31 August 2032 Fourth Further Term: 31 August 2037 Fifth Further Term: 31 August 2042
Item 10.	Rent: (Clause 1 & 5)	\$294,364.21 per annum including GST
Item 11.	Market Rent Review Dates: (Clauses 1 & 6)	The Commencement Date of any Further Term
Item 12.	CPI Adjustment Dates: (Clauses 1 & 7)	Each anniversary of the Commencement Date during the Term but excluding the Commencement Date of the Term and the Commencement Date of any Further Term. Each anniversary of the Commencement Date during any Further Term.
Item 13.	Percentage Rent Increase Dates: (Clauses 1 & 8)	Not applicable.

Item 14. Permitted Use:
(Clauses 1 & 16.1)

Licensed, gaming, social and recreational club premises

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Lease

Council leases the Premises to the Tenant together with the right to use the Common Areas subject to the terms contained in this Lease.

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

The Common Seal of the **Melton City Council** was)
hereunto affixed in the presence of:)
)

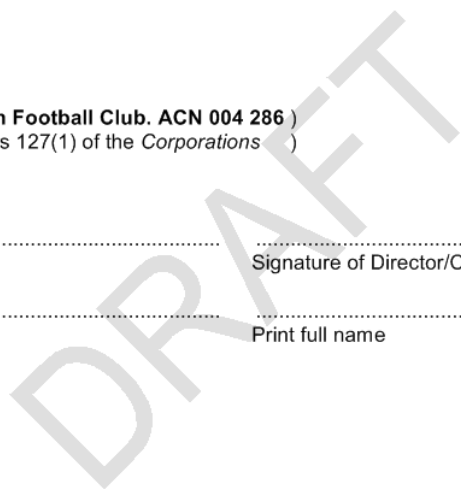
..... Councillor

..... Chief Executive Officer

Executed by Essendon Football Club. ACN 004 286)
373 in accordance with s 127(1) of the *Corporations Act 2001*)
Act 2001:

..... Signature of Director Signature of Director/Company Secretary

..... Print full name Print full name



1. Definitions

In this Lease unless expressed or implied to the contrary:

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

Authority means any governmental, statutory, municipal, public or other department, agency or body having jurisdiction over or in respect of the Land or the Premises, but whilst the Council is a municipal body, relates to the Council only when acting in its capacity as a council and not in its capacity as landlord.

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

Building Regulations means the *Building Regulations 2006* (Vic).

Commencement Date means the date specified in Item 5.

Common Areas means those parts of the Land shown cross-hatched in pink and marked as common areas on the Plan.

Contamination includes any solid, liquid, gas, radiation or substance which makes or may make the condition of the Premises or groundwater beneath or part of the surrounding environment:

- (a) unsafe, unfit or harmful for habitation by persons or animals; or
- (b) unfit for any use permitted under any applicable planning scheme as amended from time to time

or which is defined as such in any Environmental Protection Legislation.

Council means the Council specified in Item 1 and includes Council's successors and where it is consistent with the context includes Council's employees and agents and except to the extent that it is expressly stated to the contrary relates to Council in its capacity as landlord under the lease and not as a municipal body.

Council's Fixtures means all fittings, fixtures, and chattels installed by Council prior to the Commencement Date or during the Term and the fitting fixtures and chattels specified in Attachment 4.

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 Council reasonably determines.

CPI Adjustment Date means the date(s) (if any) described in Item 12.

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

EFC means Essendon Football Club (ACN 004 286 373).

Environmental Protection Legislation means any statute, regulation, code, proclamation, ministerial directive, ordinance, by law, planning policy or subordinate legislation, past, present or future, relating to pollutants and contaminants, use of land, human health and safety or protection of the environment.

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

Expiry Date means the date specified in Item 6.

Further Term means the further term(s) specified in Item 8.

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 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 Lease Particulars.

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 Premises or the Land, as applicable, assessed for Rates and Taxes as determined by a surveyor engaged by Council.

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

Market Rent Review Dates means the date(s) (if any) specified in Item 11.

Melton Social Members means past members of Melton Country Club Inc (ABN 35 207 953 452) and 'Social Members' of EFC (as defined under its Constitution as at 1 December 2018 and equivalent members of EFC under any amended or replacement constitution of EFC).

Melton Social Members Entity means a not-for-profit or charitable entity established by Melton Social Members for the purpose of operating the Melton Country Club business (in the event that it is no longer operated by EFC).

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 Premises.

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

Owners Corporation has the meaning given to that term in the *Subdivision Act 1988* (Vic).

Percentage Rent Increase Date means the date(s) specified in Item 13.

Permitted Use means the use specified in Item 14.

Plan means the plan attached as Attachment 2.

Premises means the premises specified in Item 4 and includes 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);

Rates and Taxes means the rates, taxes, charges and levies specified in clause 9.1.

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

Rent means the amount specified in Item 10 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 set out in Attachment 1 (if any).

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 and whenever installed or brought onto the Premises, but excluding Council's Fixtures.

Term means the term specified in Item 7 and includes any period of overholding.

Valuer means the valuer appointed pursuant to clause 6.3 of this Lease.

2. **Local Government Act 1989**

This Lease is entered into pursuant to s 190 of the Local Government Act.

3. Negotiation and disclosure requirements

3.1 Negotiation for Lease

If the Act applies to this Lease, the Tenant acknowledges receiving from Council:

- 3.1.1 a copy of the proposed Lease; and
- 3.1.2 a copy of the information brochure about retail leases published by the Small Business Commissioner,

as soon as the Tenant entered into negotiations with Council, or its agent in respect of this Lease.

3.2 Disclosure statement

If the Act applies to this Lease, the Tenant acknowledges having received from Council:

- 3.2.1 a disclosure statement (in the form prescribed by the Act) attached as Attachment 3; and
 - 3.2.2 a copy of the proposed lease,
- at least 7 days prior to the Tenant entering into this Lease.

4. Duration of the Lease

4.1 Term

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

4.2 Lease less than 5 years

- 4.2.1 If the Act applies to this Lease, and this Lease is for a term less than 5 years (including any further term) for the purposes of s 21 of the Act, the Tenant must:
 - (a) request the Small Business Commissioner to give the certification specified in s 21(5) of the Act (**Certification**) within 7 days of the Commencement Date;
 - (b) give to Council the Certification within 7 days of receipt; and
 - (c) give to Council a written notice waiving the application of s 21 of the Act to this Lease at the same time as providing the certificate to Council.

4.3 Option for a Further Term

Council will grant to the Tenant a new lease for the Further Term if the Tenant:

- 4.3.1 gives 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 9);
- 4.3.2 has remedied any breach of this Lease which is capable of remedy of which the Tenant has received not less than 14 days written notice from Council; and

- 4.3.3 has not persistently defaulted under this Lease and Council has given written notice of the defaults.

The new lease for the Further Term will commence on the day after this Lease ends and be on 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 clauses 6, 7 and 8.

4.4 Execution of new Lease for Further Term

Council must provide a draft of the new lease for the Further Term to the Tenant as soon as reasonably practicable of the Tenant's exercise of the option for the Further Term and the Tenant (where applicable) must:

- 4.4.1 execute the new lease for the Further Term; and
- 4.4.2 sign any disclosure statement provided by Council to the Tenant,
- and return the above to Council within 14 days of receipt from Council.

4.5 Holding Over

If the Tenant continues to occupy the Premises after the Expiry Date with Council's consent, except under a lease arising from the valid exercise of an option to renew, the following provisions will apply:

- 4.5.1 the Tenant will occupy the Premises as a monthly tenant at a total rental payable monthly in advance being an amount equal to one-twelfth of Rent payable by the Tenant to Council under this Lease as at the Expiry Date, the first of the monthly payments to be made on the day following the Expiry Date;
- 4.5.2 as far as applicable, the monthly tenancy will otherwise continue on the terms and conditions of this Lease;
- 4.5.3 Council may increase the monthly rent by giving the Tenant two months' written notice; and
- 4.5.4 either party may terminate the monthly tenancy by giving to the other 1 month's notice to the other party expiring on any date.

5. Payment of Rent

5.1 Payment

The Tenant must pay the Rent to Council:

- 5.1.1 by equal calendar monthly instalments in advance (and pro-rata for any period less than one month) commencing on the Commencement Date and on the following first day of each month; and
- 5.1.2 in the manner specified by Council from time to time (acting reasonably), including by direct debit.

6. Market rent review**6.1 Notice by Council**

If a Market Rent Review Date is specified in Item 11, Council must give a notice to the Tenant of Council's assessment of the market rent for the Premises to apply from the Market Rent Review Date not less than 1 month prior to the Market Rent Review Date.

6.2 Tenant's objection

The market rent nominated by Council in the notice to the Tenant will be the Rent which the Tenant must pay from the Market Rent Review Date, unless the Tenant gives a written notice to Council within 21 days of receipt of the notice from Council (time is of the essence) objecting to the market rent specified in the notice from Council. If the Tenant does not give Council the written notice, Council and the Tenant agree that the Rent will be the market rent nominated by Council in its notice to the Tenant.

6.3 Appointing Valuer

If the Tenant objects to the market rent specified by Council within the time and manner specified in the preceding sub-clause, then the Rent must be determined by a valuer, who is appointed by the parties jointly and where the parties cannot agree on a valuer within 21 days of Council receiving the Tenant's notice objecting to the rent, either party may request:

- 6.3.1 the President of the Australian Property Institute (Victorian Division) or its successor body, to appoint a valuer;
- 6.3.2 where the Act applies to this Lease, the Small Business Commissioner to appoint a specialist retail valuer pursuant to s 37 of the Act.

6.4 Determination by Valuer

Council and the Tenant must instruct the Valuer to:

- 6.4.1 determine a market rent for the Premises to apply on and from the Market Rent Review Date in accordance with clause 6.7; and
- 6.4.2 act as an expert and not an arbitrator (the Valuer's decision is binding on Council and the Tenant). The Council and the Tenant must share the costs of the Valuer equally.

6.5 Council's and Tenant's submissions

- 6.5.1 The Valuer may confer with Council and the Tenant and may require either party to supply information which the Valuer considers relevant to the determination.
- 6.5.2 Any request for information must be complied with promptly in writing by the party to whom it is directed, who will make a copy of that information available to the other party.
- 6.5.3 Either party may supply the Valuer with other information which it considers relevant and, if it does so, must make a copy of that information available to the other party.
- 6.5.4 Information may be provided on a confidential basis and, if so, the party receiving it and the Valuer will treat the information as confidential and will not use that information other than for the purposes of this clause 6.

6.6 Written submissions

- 6.6.1 Council and the Tenant may make written submissions to the Valuer in relation to the market rent within 30 days of receipt of written notice of the Valuer's acceptance of the Valuer's appointment.
- 6.6.2 The Valuer must not determine the market rent until the expiration of that period of 30 days.

6.7 Valuer's criteria

- 6.7.1 Where the Act applies to this Lease, in determining the market rent as at the Market Rent Review Date, the Valuer will have regard to the matters set out in s 37(2) of the Act.
- 6.7.2 Where the Act does not apply to this Lease, in determining the market rent as at a Market Rent Review Date, the Valuer may take into account any matters the Valuer considers relevant including taking into account or disregarding any written submissions received from Council or the Tenant but the Valuer must:
- (a) disregard:
- (i) any goodwill attributable to the Premises by reason of the trade, business or activity carried on by the Tenant and the value of Premises and the Tenant's Property;
 - (ii) any state of disrepair of the Premises if that condition results from any work carried out or not carried out on the Premises by the Tenant or from the Tenant's breach of any provision of this Lease;
 - (iii) any money received under any sublease, subtenancy agreement or occupational arrangement in respect of the Premises which has not been approved by Council; and
 - (iv) anything (including part of a submission received from Council or the Tenant) which is not consistent with the matters to be disregarded or taken into account under this clause 6.7;
- (b) take into account the following matters or, where the context requires, make the following assumptions:
- (i) the provisions of this Lease;
 - (ii) the Term and any option for renewal (disregarding the elapsed part of the Term);
 - (iii) the rent and outgoings paid or payable in respect of other premises of a quality, nature and size similar to the Premises (including any car parking areas, landscape areas or other areas made available to the Tenant);
 - (iv) the use permitted by the relevant laws and the provisions of this Lease;
 - (v) assume that the Tenant has observed and performed all of the provisions of this Lease; and

- (vi) the value of the local goodwill attaching to the Premises (as distinct from the personal goodwill attached to the Tenant's business conducted at or from the Premises) attributable to the location, facilities, management and promotion of the Premises (but excluding the facilities, management and promotion of or by the Tenant).

6.8 Payment of Rent pending valuation

Where the Tenant objects to Council's assessment of the Rent, until the Rent is agreed, or has been determined by the Valuer, the Tenant must continue to pay to Council the Rent payable immediately prior to the Market Rent Review Date. On the next due date for the payment of the Rent following Council and the Tenant agreeing on the Rent, or the Valuer determining of the Rent pursuant to the preceding sub-clause, Council and the Tenant must make any necessary adjustments, including payment of interest calculated from the due date until the date of payment at the Reserve Bank of Australia's Official Cash Rate plus 3.5% on any money owing by either party calculated from the Market Rent Review Date.

6.9 Appointing new Valuer

If the Valuer does not make a determination within 45 days of appointment, resigns or otherwise becomes unable to make the determination, an alternative valuer may be appointed pursuant to clause 6.3.

7. CPI adjustment of Rent

7.1 Calculation of adjustment

If a CPI Adjustment Date is specified in Item 12, 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.

7.2 Payment of adjusted Rent

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

8. Percentage Rent increase

8.1 Calculation of adjustments

If a Percentage Rent Increase Date is specified in Item 13, the Rent on the Percentage Rent Increase Date is increased by the percentage specified in Item 13.

8.2 Payment of increased Rent

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

9. Outgoings**9.1 Rates and Taxes**

The Tenant must pay to Council, or the relevant authority on the later of the due date or 10 Business Days after receipt of a valid invoice (or, if the payment is consideration for a taxable supply, a valid tax invoice):

- 9.1.1 local government rates and charges;
- 9.1.2 water rates and charges, including water usage charges;
- 9.1.3 sewerage and drainage rates and charges;
- 9.1.4 land tax (assessed on a single holding basis and excluding foreign owner or trust surcharges) except this cost is excluded where the Act applies to this Lease; and
- 9.1.5 all other rates, taxes, charges and levies assessed in respect of the Premises by an Authority.

9.2 Proportion of Rates and Taxes

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

9.3 Receipt for payment

The Tenant must provide to Council:

- 9.3.1 copies of all notices, assessments or invoices for any Rates and Taxes received by the Tenant directly from the relevant authority within 14 days of receipt; and
- 9.3.2 receipts for any Rates and Taxes paid by the Tenant within 7 days of request by Council.

10. Other expenses**10.1 Services**

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

10.2 Costs and duty

The Tenant must pay to Council within 14 days of receipt of a valid tax invoice:

- 10.2.1 the stamp duty payable on this Lease (including penalties and fees);
- 10.2.2 Council's reasonable costs in considering the granting of any consent or approval under this Lease (regardless of whether Council actually gives such consent or approval);
- 10.2.3 the cost of any insurance premium for public liability for the Premises, and any insurance premium to insure the Premises against damage or destruction;

- 10.2.4 the cost of carrying out any repairs to Council's Fixtures except to the extent that such costs are not recoverable under the Act;
- 10.2.5 the cost of obtaining Council's mortgagee's consent to this Lease (if required) except this amount is not recoverable where the Act applies to this Lease;
- 10.2.6 Council's architects or contractor's fees payable pursuant to clause 13.4.4; and
- 10.2.7 Council's reasonable costs (including charges on a solicitor-own client basis) incurred as a result of a breach of this Lease by the Tenant.

11. GST

11.1 Definitions

In this clause:

- 11.1.1 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;
- 11.1.2 **GST** means GST within the meaning of the GST Law (and includes penalties and interest to the extent incurred due to the default of the Tenant). If under or in relation to the *National Taxation Reform (Consequential Provisions) Act 2000* (Vic) or a direction given under s 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
- 11.1.3 **GST Law** has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

11.2 GST exclusive

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

11.3 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.

11.4 Payment of GST

Subject to clause 11.5 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.

11.5 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 11.4.

11.6 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:

- 11.6.1 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
- 11.6.2 if the payment or reimbursement is subject to GST, an amount equal to that GST.

11.7 Adjustment events

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

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

12. Payment requirements**12.1 No deduction or right of set-off**

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

12.2 Interest on late payments

The Tenant must pay to Council on demand interest at the rate per annum equal to the current rate fixed under s 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.

12.3 Method of payment

The Tenant must make all payments under this Lease in such manner as Council reasonably requires from time to time (acting reasonably), but excluding direct debit.

13. Repairs, refurbishment and alterations**13.1 Repairs and Maintenance**

Subject to clause 13.2, the Tenant must:

- 13.1.1 keep the Premises free and clear of pests, insects and vermin;
- 13.1.2 keep the Premises and the Tenant's Property clean and free from rubbish, store all rubbish in proper containers and have it regularly removed;
- 13.1.3 keep the Premises in the same condition as it was in at the Commencement Date (fair wear and tear excepted)
- 13.1.4 repair any damage caused by the Tenant and maintain in working order all plumbing, drains, pipes and sewers exclusively servicing the Premises except to

the extent that the need for works is caused or contributed to by the wrongful act or omission, negligence or default of Council occurring following the commencement of the Term;

- 13.1.5 pay the costs (if any) for the removal of waste and sewerage from the Premises;
- 13.1.6 maintain any gardens in the Premises in good condition well-watered and free of weeds;
- 13.1.7 repair all defective lights, fluorescent tubes, windows, doors and locks in or exclusively servicing the Premises;
- 13.1.8 promptly repair or replace all broken, cracked or damaged glass in the Premises, with glass of the same or similar gauge and quality;
- 13.1.9 make good any damage caused to any adjacent property by the Tenant; and
- 13.1.10 give 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.

13.2 Exclusions to maintenance obligations

Nothing in this clause 13 shall impose any obligation on the Tenant to:

- 13.2.1 do any work of a structural or capital nature;
- 13.2.2 repair any damage caused by fair wear and tear; or
- 13.2.3 repair any damage caused by fire, lighting, tempest, explosion, earthquake, aircraft, riot, civil commotion or any other risk covered by insurance taken out by Council in respect of the Premises (except to the extent that any insurance money is irrecoverable due to the wrongful act or omission, neglect or default of the Tenant),

unless caused by the wrongful act or omission, negligence or default of the Tenant.

13.3 Equipment in Premises

The Tenant must:

- 13.3.1 repair and maintain Council's Fixtures including airconditioning and heating equipment exclusively serving the Premises (but excluding expenses of a capital nature) in accordance with Council's reasonable requirements;
- 13.3.2 keep current during the Term such repair, maintenance and service contracts as Council reasonably requires in relation to the Tenant's obligations under clause 13.3.1 and provide copies to Council within 7 days of request; and.
- 13.3.3 comply with Council's reasonable requirements concerning the use of Council's Fixtures, including airconditioning and heating equipment.

13.4 Alterations to Premises

The Tenant must ensure any alterations or works to the Premises, any services to the Premises or the Tenant's Property are carried out:

- 13.4.1 strictly in accordance with plans and specifications approved by Council (such approval not to be unreasonably withheld or delayed);

- 13.4.2 by qualified tradespersons approved by Council (such approval not to be unreasonably withheld or delayed);
- 13.4.3 to Council's reasonable satisfaction and in accordance with Council's reasonable requirements (including Council's requirements as to the standard, type, quality, size and colour of any of the Tenant's Property);
- 13.4.4 under the supervision of Council's architect or consultant (the reasonable cost of which must be paid by the Tenant to Council within 14 days of demand); and
- 13.4.5 in accordance with all rules and requirements of any authorities having jurisdiction over the Premises.

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

13.5 Occupational health and safety

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

- 13.5.1 the Tenant has sole management and control of the Premises and has sole responsibility for ensuring that the Premises and the means of entering and leaving them are safe and without risks to health;
- 13.5.2 Council appoints the Tenant as Principal Contractor in respect of any works to be carried out by the Tenant on the Premises to which an OHS Law applies;
- 13.5.3 the Tenant must carry out such works in accordance with the requirements of the OHS Law; and
- 13.5.4 Council authorises the Tenant to exercise whatever authority is necessary for the Tenant to discharge the responsibilities of the appointment under clause 13.5.2.

13.6 Not interfere with services

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

13.7 Defacing Premises

The Tenant must not deface or damage the Premises (including drilling holes in the Premises) except where approved by Council in accordance with clause 13.2.

13.8 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 Council, Council may enter the Premises to carry out such repairs, maintenance and works at any reasonable time after giving the Tenant reasonable notice. The reasonable cost of all such repairs, maintenance and works must be paid by the Tenant to Council within 10 Business Days of receipt of a valid tax invoice.

14. Insurance**14.1 Public liability and glass insurance**

14.1.1 The Tenant must maintain insurance in the name of the Tenant (and noting the interest of the Council as a principal) with a reputable insurer for:

- (a) public liability for the amount of \$20 million concerning 1 single event (or such greater sum as reasonably required by Council); and
- (b) the Tenant's damage to any windows and any other glass in the Premises for the full replacement value.

14.1.2 The Tenant must ensure that the policies effected under clause 14.1.1 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.

14.2 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.

14.3 Payment and production of policies

The Tenant must pay all insurance premiums on or before the due date for payment and produce to Council copies of the certificate of currency on or before each anniversary of the Commencement Date.

14.4 Not invalidate policies

The Tenant must:

- 14.4.1 not do anything which to the Tenant's knowledge may make any insurance effected by Council or the Tenant invalid, capable by being cancelled or rendered ineffective, or which may increase any insurance premium payable by Council; and
- 14.4.2 pay any increase in the insurance premium caused by the Tenant's wrongful act, default or particular use of the Premises.

14.5 Requirements by insurer

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

15. Release, indemnity, compensation and liability**15.1 Release**

The Tenant uses and occupies the Premises at its own risk and releases 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 wrongful act or omission, neglect or default of Council.

15.2 Indemnity

The Tenant must indemnify and hold harmless 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 wrongful act or omission, neglect or default of Council.

15.3 No compensation

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

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

except to the extent that such loss or damage arises out of the wrongful act or omission, neglect or default of Council.

15.4 No liability

The Tenant acknowledges and agrees that:

- 15.4.1 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
- 15.4.2 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 Council undertaken in any capacity including (but not limited to) in exercising any powers referred to in clause 15.4.1,

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.

16. Use of Premises**16.1 Permitted Use**

The Tenant must use the Premises for the Permitted Use and not use the Premises for any purpose other than the Permitted Use.

16.2 No warranty

The Tenant:

- 16.2.1 acknowledges that Council does not represent that the Premises are suitable for the Permitted Use; and
- 16.2.2 must make its own enquiries as to the suitability of the Premises for the Permitted Use.

16.3 Illegal purpose

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

17. Other obligations concerning the Premises**17.1 Compliance with laws**

The Tenant must comply with all laws and any requirements of any Authority in connection with the Premises and the Tenant's use and occupation of the Premises, except the Tenant will not be required to carry out any structural works unless the need for such works arises from:

17.1.1 the negligent act or omission of the Tenant;

17.1.2 the failure by the Tenant to comply with its obligations under this Lease; or

17.1.3 the Tenant's use of the Premises.

17.2 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 Council before varying any licence or permit or applying for any new licence or permit (such consent not to be unreasonably withheld or delayed).

17.3 Nuisance

The Tenant must not do anything in connection with the Premises which may:

17.3.1 cause a nuisance or unreasonably interfere with any other person; or

17.3.2 be dangerous or offensive in Council's reasonable opinion.

17.4 Security

The Tenant must keep any building forming part of the Premises secure at all times when the Premises are not being used by the Tenant.

17.5 Signs

The Tenant must seek the prior written consent of Council (which must not be unreasonably withheld or delayed) 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.

17.6 Fire drills

The Tenant must participate in any fire or emergency drills of which the Tenant receives at least 7 days' notice from Council.

17.7 No auctions

The Tenant must not conduct any auctions or fire sales in the Premises.

17.8 No blocking of windows

The tenant must not darken or obstruct any windows or lights forming part of the Premises or permit any new window, light, opening or doorway, path or passage to be made in, against, out of or upon the Premises without Council's written consent.

17.9 Not to Obstruct Common Area

The Tenant must:

17.9.1 not obstruct the Common Areas; and

17.9.2 only use the Common Areas to enter and exit the Premises and for parking, loading and unloading of vehicles.

17.10 Use of Common Area for Business

The Tenant must get Council's consent before the Tenant uses or allows any part of the Common Area to be used for:

17.10.1 any business or commercial purposes; or

17.10.2 display or advertising excluding the display of signage in locations equivalent to the existing signage as at the Commencement Date.

17.11 Heavy objects and inflammable substances

The Tenant must not:

17.11.1 store any inflammable or explosive substances in the Premises; or

17.11.2 store any heavy objects in the Premises or anything likely to damage the Premises, unless for the purposes of the Permitted Use.

17.12 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 Council.

17.13 Endanger Premises

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

17.14 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.

18. Rules**18.1 Council may make Rules**

Council may make reasonable rules for the Common Areas (**Common Area Rules**) (which are not inconsistent with this Lease) for the use, safety, appearance, cleanliness and good management of the Common Areas and must provide a copy of any Common Area Rules to the Tenant within a reasonable time after creating or amending the Common Area Rules.

18.2 Tenant must obey Common Area Rules

The Tenant must observe and comply with the Common Area Rules. A breach of the Common Area Rules is a breach of this Lease.

18.3 Lease prevails over Common Area Rules

If any of the Common Area Rules are inconsistent with the terms of this Lease, the terms of this Lease prevails to the extent of the inconsistency.

19. Tenant's environmental obligations**19.1 Comply with Environmental Protection Legislation**

The Tenant must, in its use of the Premises, comply with all Environmental Protection Legislation and any permit, approval, authority or licence issued pursuant to any Environmental Protection Legislation.

19.2 Not permit Contamination

The Tenant must not spill or deposit, or carry out any activities on the Premises which may cause any Contamination, or permit any Contamination to escape in any other way into or on the Premises, drainage or surrounding environment.

19.3 Notify of and clean up Contamination

If the Tenant causes any Contamination to the Premises, the Tenant must at its own cost:

- 19.3.1 immediately notify Council, the Environment Protection Authority and any other appropriate Authority;
- 19.3.2 clean up the Contamination and do everything necessary to minimise harm; and
- 19.3.3 promptly comply with any valid notice, order, direction or requirement of any Authority in relation to any such Contamination.

19.4 Indemnify Council

In addition to any other indemnity in this Lease, the Tenant indemnifies Council against all claims for damages, loss, injury or death caused by or arising out of or otherwise in respect of a breach of this clause by the Tenant.

19.5 Obtain reports, surveys or audits

The Tenant must immediately obtain any reports, surveys or audits which Council may reasonably require to enable Council to determine whether a breach of the terms of this clause has occurred. The Tenant will also pay Council on demand the reasonable costs of

any such report, survey or audit which Council may obtain if such report concludes a breach has occurred.

20. Dealing with interest in the Premises**20.1 No parting with possession**

- 20.1.1 Subject to clauses 20.1.2, 20.1.3 and 20.2, the Tenant must not give up possession of the Premises including assigning this Lease, sub-lease the Premises or grant to any person a licence or concession in respect of the Premises.
- 20.1.2 Notwithstanding clause 20.1.1, the parties acknowledge and agree that the Tenant may licence the use of parts of the Premises for the following purposes only:
- (a) automatic teller machines or similar;
 - (b) use by the local RSL or other charitable interests; and
 - (c) equipment associated with the Tenant's use of the Premises.
- 20.1.3 Notwithstanding clause 20.1.1, the parties acknowledge and agree that the Tenant may assign this Lease to the Melton Social Members Entity.

20.2 Conditions of assignment

Where the Act applies to this Lease, Council must not unreasonably withhold its consent to an assignment of this Lease if the Tenant:

- 20.2.1 makes an offer to Council under clause 20.4.1 and Council does not notify the Tenant under clause 20.4.2 that Council proposes to accept the offer;
- 20.2.2 requests Council in writing to consent to the assignment of the Lease to a new tenant;
- 20.2.3 has remedied any breach of this Lease of which the Tenant has received written notice from Council;
- 20.2.4 provides to Council the name and address of the new tenant and proves to Council's reasonable satisfaction that the new tenant is solvent and able to comply with its obligations under this Lease by providing at least 2 references as to the financial circumstances of the new tenant and at least 2 references as to the business experience of the new tenant;
- 20.2.5 provides evidence satisfactory to Council that the new tenant is exempt from Commonwealth income tax under the *Income Tax Assessment Act 1997* (Cth);
- 20.2.6 executes and procures the new tenant to execute an assignment of lease which must include a condition by which the Tenant releases Council from any claims arising under or in connection with the Lease and otherwise in a form approved by Council (acting reasonably);
- 20.2.7 procures the new tenant to provide such additional security as Council may reasonably require (but excluding personal guarantees);
- 20.2.8 pays Council's reasonable costs in connection with approving the new tenant and the costs of the preparation, negotiation and stamping of any document required under this clause; and

20.2.9 where the Act applies to this Lease, provides the new tenant with a copy of the disclosure statement as required by s 61(3) of the Act.

20.3 No assignment if Act to apply

Despite anything to the contrary in this Lease, if the Act does not apply to this Lease and an assignment of this Lease, would result in the Act applying to this Lease (either during the Term or as a result of the grant of a lease for the Further Term) Council may withhold its consent to an assignment of this Lease.

20.4 Right of first refusal

20.4.1 The Tenant must, prior to applying for Council's consent for an assignment of this Lease, give written notice to Council offering to assign this Lease to Council on the same terms as the proposed assignment, subject to the procedure in clause 20.4.2. The Tenant's offer under this clause must include details of the new tenant and the information required in relation to the new tenant under this clause 20.

20.4.2 Council will notify the Tenant within 14 days after notification of the Tenant's offer under clause 20.4.1 whether Council proposes to accept the offer. If Council notifies the Tenant that it proposes to accept the offer then the Tenant may within 14 days of Council's notice retract the offer in which case the assignment to Council will not proceed but the Tenant must not assign this Lease to that new tenant. If the Tenant does not retract the offer within the 14 day period, then Council's acceptance of the offer will become final and binding on both parties.

20.5 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 Council's prior written consent in accordance with this clause 20.

20.6 Mortgage of Lease

The Tenant must not create any security over this Lease.

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

21.1 Tenant's obligations

At the end of this Lease, the Tenant must:

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

21.1.2 remove the Tenant's Property (including all signs and lettering) and reinstate any damage caused by the removal of the Tenant's Property any damage caused by the installation or removal of the Tenant's Property; and

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

21.2 Tenant's Property left in Premises

Anything left in the Premises after 28 days of the end of this Lease will be deemed to be abandoned by the Tenant and will become the property of Council and may be removed by Council at the Tenant's cost and at the Tenant's risk and the parties agree that this clause 21.2 is an agreement about the disposal of uncollected goods for the purposes of s 56(6) of the *Australian Consumer Law and Fair Trading Act 2012* (Vic).

22. Council's rights and obligations**22.1 Quiet enjoyment**

Council must not interfere with the Tenant's use and occupation of the Premises except as provided by this Lease (including under clause 23.1).

22.2 Alterations to the improvements

Council may carry out any works, alterations, renovation or refurbishment of the Land (excluding the Premises, unless Council is required to do so by law) which may include extending or reducing any buildings on the Land.

22.3 Dealing with the Land

Council may:

22.3.1 subdivide the Land or grant easements or other rights over the Land or the Premises; and

22.3.2 install, repair and replace pipes, cables and conduits in the Premises;

except where it will unreasonably interfere with the Tenant's use and occupation of the Premises.

22.4 Entry by Council

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

22.4.1 inspect the condition of the Premises;

22.4.2 rectify any default by the Tenant under this Lease;

22.4.3 undertake an environmental inspection or accreditation or monitor the environmental management of the Premises, including energy and water use;

22.4.4 carry out any inspection, repairs, maintenance, works or alterations in the Premises which Council is required to carry out by any law or authority or, subject to obtaining the Tenant's prior written approval which must not be unreasonably withheld or delayed, such other works which Council decides to do.

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

22.5 Emergency entry

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

22.6 Reletting and sale

Council may:

- 22.6.1 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 3 months prior to the end of the Term (except where the Tenant has validly exercised an option for a Further Term); and
- 22.6.2 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 Council must not unreasonably interfere with the Tenant's use and occupation of the Premises.

22.7 Council's consent

Unless otherwise provided for in this Lease, where Council is required to give its consent under this Lease, Council may give or refuse its consent subject to such conditions as Council may determine in its absolute discretion.

22.8 Change in landlord

If a person other than Council becomes entitled to receive the rents reserved by this Lease whether by operation of law or otherwise (**New Landlord**) then:

- 22.8.1 Council is released from all further obligations under this Lease arising after the New Landlord becomes landlord; and
- 22.8.2 the Tenant must at the cost of Council enter into a deed reasonably required by Council under which the Tenant covenants that the New Landlord shall have the benefit of all of the Tenant's obligations under this Lease.

22.9 Maintenance and repair

Subject to the express provisions of this Lease, Council must:

- 22.9.1 maintain the Premises in a structurally sound and weatherproof condition;
- 22.9.2 promptly effect any other repairs or works required to the Premises by law or any Authority and which are not the responsibility of the Tenant under this Lease; and
- 22.9.3 maintain suitable damage and destruction insurance in relation to the Premises; and
- 22.9.4 comply with any laws to the extent that compliance with laws is not the obligation of the Tenant under this Lease.

23. Termination of Lease**23.1 Re-entry**

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

- 23.1.1 any part of the Rent is in arrears for 14 days following written demand; or

23.1.2 an Insolvency Event occurs in relation to the Tenant; or

23.1.3 the Tenant breaches an essential term of this Lease as defined at clause 23.3 and does not remedy the breach within 14 days of receipt of written notice from Council.

23.2 Damages following determination

If this Lease is terminated by Council, the Tenant agrees to compensate Council for any loss or damage 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.

23.3 Essential terms

The essential terms of this Lease are clauses 5.1.1, 9.1, 10.1, 10.2, 11.4, 14, 16.1, 16.3, 17.1, 17.3, 19, 20 and 21 and the Tenant's obligations under any Special Conditions.

23.4 No deemed termination

If the Tenant vacates the Premises, 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. Unless the Tenant has validly terminated this Lease, this Lease will be deemed to continue until such time as Council gives notice to the Tenant terminating this Lease, or otherwise agrees with the Tenant that this Lease is terminated.

24. Destruction or damage of Premises

24.1 Reduction in Rent

If the Premises, or any part of the Premises is destroyed or damaged to the extent that the Tenant cannot use or have access to the Premises (except to the extent the Tenant causes or contributes to the destruction or damage, or Council's insurer is not legally required to reinstate the Premises because the Tenant caused or contributed to the destruction or damage) then the Rent and other amounts due under this Lease will abate 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.

24.2 Reinstatement of Premises

If the Premises or any part of the Premises are destroyed or substantially damaged, Council may, within 3 months from the date of such damage or destruction, give notice to the Tenant:

24.2.1 terminating this Lease, where Council considers that the damage or destruction is such that repairing it is impracticable; or

24.2.2 that Council will commence reinstatement of the Premises to a condition where the Tenant can use or have access to the Premises.

Council does not have to reinstate the Premises.

24.3 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 Council terminating this Lease where Council does not:

24.3.1 give notice to the Tenant pursuant to clause 24.2; or

24.3.2 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.

24.4 Dispute resolution

If a dispute arises under this clause about the amount of the Rent or Outgoings other amounts payable by the Tenant, either party may ask the President of the Australian Property Institute (Victorian Division) to nominate a valuer to determine the dispute as an expert. The parties will be bound by the determination of the valuer and will share the fees of the valuer equally.

25. Personal Property Securities Act

25.1 Terms used in this clause

In this clause 25:

25.1.1 **Council PPS Property** means any item of property:

- (a) in which the Council has an interest; and
- (b) which is situated on the Premises at any time during the term of this Lease;

25.1.2 **PPS Act** means the *Personal Property Securities Act 2009* (Cth); and

25.1.3 words and expressions that are not defined in this Lease but which have a defined meaning in the PPS Act have the same meaning as in the PPS Act.

25.2 No other Security Interest

The Tenant:

25.2.1 warrants that it has not granted a Security Interest in respect of any Council PPS Property on or prior to execution of this Lease that has not been previously disclosed to the Council in writing; and

25.2.2 agrees that it will not grant a Security Interest in respect of any Council PPS Property or Tenant's PPS Property in favour of any person other than the Council without the Council's prior written consent, which consent may be granted or withheld in the Council's absolute discretion and on any conditions that the Council considers necessary or desirable at its absolute discretion.

25.3 Indemnity

The Tenant must indemnify and hold harmless the Council against all claims, damages or loss incurred by the Council as a consequence of any breach by the Tenant of this clause.

25.4 Documents under PPS Act

The Tenant acknowledges and agrees that:

- 25.4.1 it waives its right under the PPS Act to receive a copy of any 'verification statement' or 'financing charge statement' (as those terms are defined in the PPS Act); and
- 25.4.2 on the expiration or earlier termination of this Lease, the Tenant must sign (and procure any holder of a registered Security Interest to sign) any document that the Council considers necessary or desirable under or as a result of the PPS Act to release any registered Security Interests under the PPS Act in relation to the Tenant PPS Property and the Council PPS Property.

25.5 Inconsistency with other clauses

In the event of any inconsistency between this clause and any other provision of this Lease, the provisions of this clause will prevail and that other provision will be read down and interpreted accordingly.

26. General**26.1 Notices**

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

26.1.1 the Tenant:

- (a) at its address set out in this Lease, or at the Tenant's registered office address; and
- (b) with a copy served by email (including the term "Contractual Notice" in the subject line) to notices@essendonfc.com.au,

or any replacement address(es) notified in writing to the Council by the Tenant; and

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

26.2 Time of service

A notice or other communication is deemed served:

- 26.2.1 if served personally or left at the person's address, upon service;
- 26.2.2 if posted, from within Australia 3 business days after posted and if posted outside Australia 7 Business Days after posted;
- 26.2.3 if served by facsimile transmission, subject to clause 26.2.5, 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;
- 26.2.4 if served by email, subject to clause 26.2.5 upon the earlier of:
 - (a) the sender receiving a manual or automated message acknowledging delivery; or

- (b) 4 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered; and

26.2.5 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.

26.3 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.

26.4 Waiver

If 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 Council's rights under this Lease, it will not be a waiver of the breach of this Lease by the Tenant or of Council's rights under this Lease.

26.5 Special Conditions

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

27. Interpretation

27.1 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.

27.2 Persons

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

27.3 Joint and several

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

27.4 Legislation

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

27.5 Clauses and headings

In this Lease:

- 27.5.1 a reference to a clause, schedule or attachment is a reference to a clause, schedule or attachment in or to this Lease; and

27.5.2 headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this Lease.

27.6 Severance

In this Lease:

27.6.1 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

27.6.2 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.

27.7 Number and gender

In this Lease, a reference to:

27.7.1 the singular includes the plural and vice versa; and

27.7.2 a gender includes the other genders.

27.8 No relationship

No party to this Lease has the power to obligate or bind any other party. Nothing in this Lease will be construed or deemed to constitute a partnership, joint venture or employee, employer or representative relationship between Council and the Tenant. Nothing in this Lease will be deemed to authorise or empower the Tenant to act as agent for or with Council.

27.9 Exclusion of statutory provisions

The following statutory provisions are excluded from this Lease:

27.9.1 Section 144 of the *Property Law Act 1958* (Vic); and

27.9.2 Division 7 of the *Transfer of Land Act 1958* (Vic).

Attachment 1

Special Conditions

1. Surrender of Existing Lease

- 1.1 The parties agree that the existing lease for the Premises between Council and the Tenant dated 29 December 1995 (as extended and varied from time to time) (**Existing Lease**) terminates automatically on the Commencement Date.
- 1.2 This special condition does not affect or limit the Tenant's obligation under the Existing Lease to continue paying rent, outgoings and any other monies due under the Existing Lease for the period up to the Commencement Date.

2. Gaming licence

- 2.1 Council acknowledges that, as at the Commencement Date, the Tenant holds a premises approval under the *Gambling Regulation Act 2003* (Vic) (**Premises Approval**) to operate gaming machines at the Premises and holds a venue operators licence under the *Gambling Regulation Act 2003* (Vic) (**Venue Operators Licence**) (Premises Approval and Venue Operators Licence collectively referred to as **Gaming Licences**).
- 2.2 The Tenant must comply with the provisions of the Gaming Licences, and must seek the prior written consent of Council before:
 - 2.2.1 applying for any new Gaming Licence in respect of the Premises (which does not include applying for any renewal of a Gaming Licence); or
 - 2.2.2 applying for any variation, removal, transfer, surrender or release of any Premises Approval (except for a transfer to an assignee or sub-lessee of this Lease) including to increase the level of gaming allowed at the Premises or increase the number of gaming machines from that existing as at the Commencement Date; or
 - 2.2.3 nominating any person to be a licensee or co-licensee under any Gaming Licence (insofar as the Gaming Licence relates to the Premises).

For requests involving a proposed increase in the number of gaming machines at the Premises, Council may give or withhold its consent in its absolute discretion, or may give its consent subject to such terms and conditions as Council may determine in its absolute discretion. In all other cases, Council may not unreasonably withhold such consent, but otherwise may withhold its consent or give its consent subject to such terms and conditions as Council may reasonably determine.

3. Liquor licence

- 3.1 The parties acknowledge that at the Commencement Date the Tenant holds a full club licence at the Premises and for the purposes of this Special Condition 3 such licence is a Licence or Permit save that the Tenant is not required to have obtained Council's consent before procuring or renewing such licence.
- 3.2 The Tenant must:
 - 3.2.1 seek the prior written consent of Council (which must not be unreasonably withheld) before applying for any licence or permit under the *Liquor Control Reform Act 1998* (Vic) for the Premises (**Licence or Permit**), or applying for any variation,

removal, transfer, surrender or release of the Licence or Permit (except for a transfer to an assignee or sub-lessee of this Lease) or nominating any person to be a licensee or permittee (other than an assignee or sub-lessee of this Lease);

- 3.2.2 produce the Licence or Permit to Council for inspection upon demand;
- 3.2.3 comply with all conditions of the Licence or Permit and all laws relating to the licence or permit;
- 3.2.4 not allow the Licence or Permit to be cancelled or suspended;
- 3.2.5 renew the Licence or Permit and notify Council in writing within 14 days of the renewal;
- 3.2.6 promptly notify 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; and
- 3.2.7 indemnify Council for any damages or costs incurred to the extent caused by a breach of this clause by the Tenant.

4. Tax exempt status

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).

5. Council may require Surrender Area

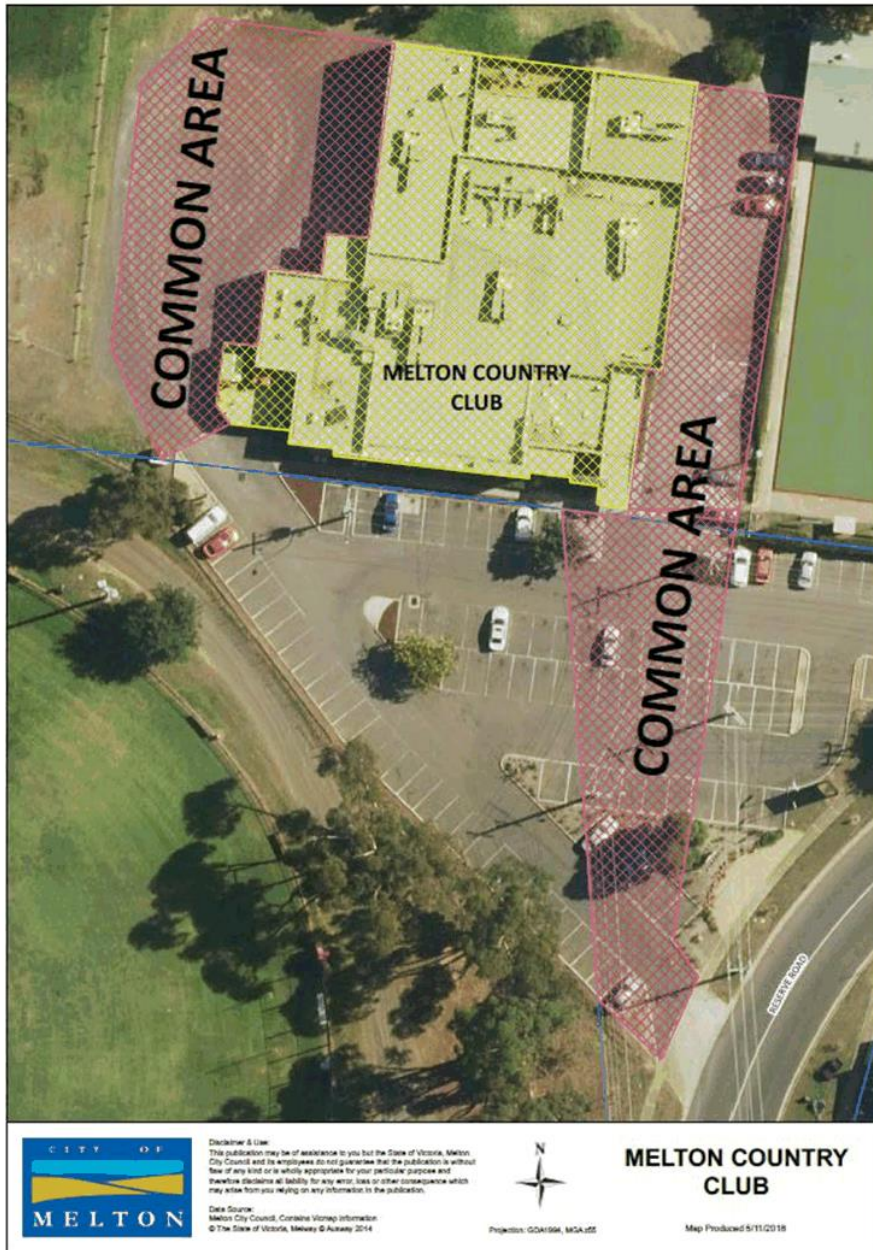
- 5.1 In this Special Condition 5, **Surrender Area** means that part of the Common Area located to the west of the Premises.
- 5.2 At any time Council may notify the Tenant in writing that the Council wishes to develop the Surrender Area, and from the date of Council's notice:
 - 5.2.1 the Surrender Area will cease to be part of the Common Area; and
 - 5.2.2 the Tenant will no longer be entitled to occupy or use the Surrender Area.
- 5.3 If Council gives the Tenant a notice under Special Condition 5.2:
 - 5.3.1 Council is not required to pay the Tenant any compensation as a result of the exercise of Council's rights under this Special Condition 5 or the loss of the Surrender Area, and the Tenant releases Council from any claim in this respect; and
 - 5.3.2 Council is not required to provide the Tenant with any additional area to make up for the loss of the Surrender Area, or provide any replacement parking spaces.



Maddocks

Attachment 2

Plan



Attachment 3

Disclosure Statement

DRAFT

Attachment 4

Council's fixtures

The following items as at the Commencement Date (if any):

1. The structure of the building on the Premises;
2. The drainage system;
3. The fire sprinkler system; and
4. The electrical services system.

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