

# LEASE AGREEMENT

49 George Street, Norwood

THE CORPORATION OF THE CITY OF NORWOOD  
PAYNEHAM & ST PETERS

BRICK AND MORTAR CREATIVE PTY LTD



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ANNEXURE A      PLAN  
ANNEXURE B      LAWYER'S CERTIFICATE

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## DATE

## PARTIES

**The Corporation of the City of Norwood Payneham & St Peters** ABN 11 390 194 824  
of 175 The Parade, Norwood SA 5067 (**Council**)

**Brick and Mortar Creative Pty Ltd** ABN 80 600 958 629 of 49 George Street, Norwood SA  
5067 (**Lessee**)

## BACKGROUND

- A. The Council is the registered proprietor, or has the care, control and management, of the Land.
- B. The Lessee has requested a lease to use the Premises for the Permitted Use.
- C. The Council has resolved to grant the Lessee a lease of the Premises and (if necessary) undertaken public consultation and/or been granted Parliamentary approval in accordance with the *Local Government Act 1999* (SA).
- D. The Council and Lessee wish to record the terms of their agreement.

## AGREED TERMS

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In this lease:

**Act** means the *Retail and Commercial Leases Act 1995* (SA).

**Agreed Consideration** means the Rent, Outgoings and all other consideration (whether in money or otherwise) to be paid or provided by the Lessee for any supply or use of the Premises and any goods, services or other things provided by the Council under this lease (other than tax payable under clause 18).

**Bank Guarantee** means an irrevocable and unconditional undertaking acceptable to the Council given by an Australian trading bank carrying on business in South Australia to pay the Council on demand the amount in Item 9 of Schedule 1 and any addition or replacement to it under clause 19.

**Building** means the interior and exterior of all present and future improvements on the Land and includes all Building Services and Common Areas and all other conveniences, services, amenities and appurtenances of in or to the Building.

**Building Services** includes all services (including gas, electricity, water, sewerage, lifts, escalators, communications, fire control, air-conditioning, plumbing and telephone and all plant, equipment, pipes, wires and cables in

connection with them) to or of the Building or any premises in or on the Land supplied by any authority, the Council or any person the Council authorises.

**Business Day** means a day which is not a Saturday, Sunday or public holiday in Adelaide.

**Commencement Date** means the commencement date described in Item 3 of Schedule 1.

**Common Areas** means all areas of the Land which are not leased or tenanted and which are for common use by tenants and lessees of the Land or Building and their invitees and customers including driveways, car parks, walkways, washrooms, toilets and stairways.

**Council** means the party described as 'Council' in this lease and where the context permits includes the employees, contractors, agents and other invitees of the Council.

**Council's Equipment** means all fixtures and fittings, plant, equipment, services, chattels and other goods installed or situated in or on the Premises and available for use by the Lessee.

**Default Rate** means a rate of two per centum per annum greater than the published annual rate of interest charged from time to time by Westpac Banking Corporation on overdraft facilities of more than \$100,000.00 and if there is more than one rate published the higher of those rates.

**GST** has the meaning given to that term in the GST Legislation.

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

**GST Rate** means 10% or the rate of GST imposed from time to time under the GST Legislation.

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

**Land** means the land described in Item 2 of Schedule 1 and includes any part of the Land.

**Legislation** includes any relevant Act of Parliament (whether State or Federal) and any regulation or by-law including by-laws issued by any local government body or authority.

**Lessee** means the party described as 'Lessee' in this lease and where the context permits includes the employees, contractors, agents, customers, subtenants and other invitees of the Lessee.

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

**Lessee's Share** means the proportion the lettable area of the Premises bears from time to time to the total lettable area of the Land as measured in accordance with the method of measurement recommended for such Premises

by the Institute's guidelines current as at the Commencement Date or such other method of measurement as the Council notifies the Lessee.

**Outgoings** means the outgoings described in Item 6 of Schedule 1.

**Payment Date** means the Commencement Date and the first day of each month during the Term.

**Permitted Use** means the use described in Item 7 of Schedule 1.

**Premises** means the premises described in Item 1 of Schedule 1 including all present and future improvements thereon and the Council's Equipment.

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

**Renewal Term** means the term (if any) of renewal or extension granted under this lease.

**Rent** means the rent described in Item 5 of Schedule 1.

**Statutory Authorities** means any government or authorities created by or under any relevant Legislation.

**Statutory Requirements** means all relevant Legislation and all lawful conditions, requirements, notices and directives issued or applicable under any such Legislation or by any Statutory Authorities.

**Term** means the period described in Item 3 of Schedule 1, the Renewal Term(s) and any period during which the Lessee holds over or remains in occupation of the Premises.

**Valuer** means a qualified valuer appointed to make a determination under this lease:

- (a) who is appointed by agreement of the Council and the Lessee or, failing agreement within 14 days of either notifying the other of the requirement for such appointment, at the request of either the Council or the Lessee, by the President or acting President of the Institute;
- (b) who has practised as a valuer with a minimum of five years relevant experience; and
- (c) who acts as an expert and not as an arbitrator.

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

## 1.2 Interpretation

In this lease, unless the context otherwise requires:

- 
- 1.2.1 headings do not affect interpretation;
  - 1.2.2 singular includes plural and plural includes singular;
  - 1.2.3 words of one gender include any gender;
  - 1.2.4 a reference to a party includes its executors, administrators, successors and permitted assigns;
  - 1.2.5 a reference to a person includes a partnership, corporation, association, government body and any other entity;
  - 1.2.6 a reference to this lease includes any schedules and annexures to this lease;
  - 1.2.7 a reference to any document (including this lease) is to that document as varied, novated, ratified or replaced from time to time;
  - 1.2.8 an agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
  - 1.2.9 an agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
  - 1.2.10 a reference to legislation includes any amendment to it, any legislation substituted for it, and any subordinate legislation made under it;
  - 1.2.11 a provision is not construed against a party only because that party drafted it;
  - 1.2.12 an unenforceable provision or part of a provision may be severed, and the remainder of this lease continues in force;
  - 1.2.13 the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions;
  - 1.2.14 an expression defined in the *Corporations Act 2001* (Cth) has the meaning given by that act at the date of this lease;
  - 1.2.15 the covenants and powers implied in leases by virtue of sections 124 and 125 of the *Real Property Act 1886* apply and are implied in this lease unless they are expressly or impliedly excluded or modified; and
  - 1.2.16 the special conditions in Schedule 2 prevail over the terms in the body of this lease to the extent of any inconsistency.

### 1.3 **Retail and Commercial Leases Act**

If the Act applies to this lease:

- 1.3.1 this lease must be interpreted subject to the Act;

- 1.3.2 any right, power or remedy of the Council or obligation or liability of the Lessee that is affected by the Act is unenforceable or void but only to the extent that it is expressly made unenforceable or void by the Act.

**1.4 Background**

The Background forms part of this lease and is correct.

**2. GRANT OF LEASE**

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

**3. TERM LESS THAN FIVE YEARS**

3.1 This clause only has effect where:

3.1.1 the Act applies to this lease; and

3.1.2 the Term is less than five years.

3.2 The Council and the Lessee acknowledge and agree that:

3.2.1 the Term is less than five years; and

3.2.2 section 20B of the Act does not apply to this lease for the Term (including any holding over period which exceeds six months).

3.3 The Lessee acknowledges that:

3.3.1 the Lessee has received independent legal advice explaining the effect of section 20B of the Act and how it would apply if this lease did not contain this clause;

3.3.2 the Lessee was not acting under coercion or undue influence in requesting or consenting to this clause; and

3.3.3 the Lessee has given assurances to the Lessee's lawyer that the Lessee was not acting under coercion or undue influence in requesting or consenting to this clause.

3.4 This lease is conditional upon the Lessee obtaining, and providing to the Council, before first accessing the Premises in accordance with special condition 10, a certificate in accordance with the Act so that the minimum statutory 5 year term does not apply to this lease.

**4. RENT**

**4.1 Payment of Rent**

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



#### 4.2 Instalment

If a rent instalment period is less than a month, the instalment for that period is calculated at a daily rate based on the number of days in the month in which that period begins and the monthly instalment which would have been payable for a full month.

### 5. RATES AND TAXES AND OUTGOINGS

#### 5.1 Liability for Rates and Taxes

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

5.1.2 The Rates and Taxes must be adjusted between the Council and the Lessee as at the Commencement Date and the end or termination date of this lease.

#### 5.2 Payment of Outgoings

5.2.1 The Lessee must pay or reimburse the Council all Outgoings levied, assessed or charged in respect of the Premises or upon the owner or occupier of the Premises.

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

#### 5.3 Lessee's Share

If any of the Rates and Taxes or Outgoings are not separately assessed or charged in respect of the Premises, then the Lessee must pay the Lessee's Share of any such Rates and Taxes or Outgoings assessed or charged in respect of the Land.

#### 5.4 Power and other utilities

5.4.1 The Lessee must pay, when due, all costs for the use of telephone, light and other facilities and the consumption of electricity, gas, and any and all other services and utilities supplied to or used from the Premises.

5.4.2 If there is no separate meter for a service or utility used on or from the Premises and if the Council so requires, then the Lessee must install the meter at its own cost.

5.4.3 Without limiting this subclause, the Lessee must comply with the *Electricity (General) Regulations 2012 (SA)* and any other applicable electricity laws.

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## 6. USE OF PREMISES

### 6.1 Permitted Use

The Lessee may use the Premises only for the Permitted Use and must not use or allow the Premises to be used for any other use without the Council's consent (such consent not to be unreasonably delayed).

### 6.2 Offensive activities

The Lessee must:

- 6.2.1 not carry on any offensive or dangerous activities on or from the Premises;
- 6.2.2 not create a nuisance or disturbance for the Council or for the owners or occupiers of any adjoining property; and
- 6.2.3 ensure at all times that activities conducted on or from the Premises do not discredit the Council.

### 6.3 Use of facilities

- 6.3.1 The Lessee must ensure that the Building Services are used carefully and responsibly and in accordance with any directions given by the Council from time to time.
- 6.3.2 The Lessee must repair or correct any damage or malfunction which results from any misuse or abuse of the Building Services by the Lessee.

### 6.4 Statutory Requirements

The Lessee must comply with all Statutory Requirements (including the *Work Health and Safety Act 2012 (SA)*) relating to:

- 6.4.1 the Lessee's use and occupation of the Premises;
- 6.4.2 the Permitted Use.

### 6.5 Signs

The Lessee must not place any sign or advertisement on the outside or inside (if they can be seen from outside) of the Premises, except a sign or advertisement which:

- 6.5.1 is approved by the Council (such approval not to be unreasonably withheld or delayed); and
- 6.5.2 complies with any relevant Statutory Requirements.

### 6.6 Dangerous equipment and installations

The Lessee may only install or use within the Premises equipment and facilities which are reasonably necessary for and normally used in connection with the Permitted Use and must not install or bring onto the Premises:

- 6.6.1 any electrical, gas powered or other machinery or equipment that may pose a danger, risk or hazard;
- 6.6.2 any chemicals or other dangerous substances that may pose a danger, risk or hazard; or
- 6.6.3 any heavy equipment or items that may damage the Premises or Building.

#### 6.7 **Fire precautions**

The Lessee must comply with all Statutory Requirements relating to fire safety and procedures including any structural works or modifications or other building works which are required as a consequence of the Lessee's use of the Premises.

#### 6.8 **Security**

The Lessee must keep the Premises securely locked at all times when the Premises are not occupied and must provide a key to the Premises to the Council (or if the Council has engaged a manager, then to the manager) to be used only in emergencies.

#### 6.9 **No warranty**

The Council makes no warranty or representation regarding the suitability of the Premises (structural or otherwise) for the Permitted Use or any other purpose.

### 7. **INSURANCE**

#### 7.1 **Lessee must insure**

The Lessee must keep current during the Term:

- 7.1.1 public risk insurance for at least the amount in Item 8 of Schedule 1 (or any other amount the Council reasonably requires) for each claim and unlimited in the annual aggregate;
- 7.1.2 all insurance in respect of the Lessee's Equipment for its full replacement value; and
- 7.1.3 other insurances required by any Statutory Requirement or which the Council reasonably requires.

#### 7.2 **Requirements for policies**

Each policy must:

- 7.2.1 be with an insurer and on terms reasonably approved by the Council;
- 7.2.2 be in the name of the Lessee and note the interest of the Council;
- 7.2.3 cover events occurring during the policy's currency regardless of when claims are made; and

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

### 7.3 Evidence of insurance

The Lessee must give the Council certificates evidencing the currency of each policy. During the Term the Lessee must:

- 7.3.1 pay each premium before it is due for payment;
- 7.3.2 give the Council certificates of currency each year when the policies are renewed and at other times the Council reasonably requests;
- 7.3.3 not vary, allow to lapse or cancel any insurance policy without the Council's consent (such consent not to be unreasonably withheld or delayed);
- 7.3.4 notify the Council as soon as reasonably practicable if a policy is cancelled or if an event occurs which could prejudice or give rise to a claim under a policy.

### 7.4 Insurance affected

- 7.4.1 The Lessee must not do anything which may:
- 7.4.1.1 prejudice any insurance the Council has in connection with the Premises or the Building; or
- 7.4.1.2 increase the premium for that insurance.
- 7.4.2 If the Lessee does anything (with or without the Council's consent) that directly increases the premium of any insurance the Council has in connection with the Premises or the Building, the Lessee must, subject to the Council providing the Lessee with evidence and detailed reasoning for such increased premium, pay the amount of that increase to the Council within 21 days of written demand.

## 8. REPAIR AND MAINTENANCE

### 8.1 Repair

- 8.1.1 The Lessee must keep and maintain the Premises, the Lessee's Equipment and any Building Services situated within the Premises and which exclusively service the Premises in good repair.
- 8.1.2 If the Council so requires, the Lessee must promptly repair any damage to the Building or the Land caused or contributed to by the act, omission, negligence or default of the Lessee.

### 8.2 Maintain and replace

The Lessee must maintain items in or attached to the Premises, and, if damaged or worn, repair them or replace them with items of quality similar to those in use at the date the Lessee first entered into occupation of the Premises, or, if previously replaced with the Council's approval, when last replaced.

### 8.3 Alterations by Lessee

- 8.3.1 The Lessee must not carry out any alterations or additions to the Premises without the Council's consent (such consent not to be unreasonably withheld or delayed).
- 8.3.2 The Lessee must provide full details of the proposed alterations and additions to the Council.
- 8.3.3 The Council may impose any conditions it considers reasonably necessary if it gives its approval, including requiring the Lessee to obtain the Council's consent (such consent not to be unreasonably withheld or delayed) to any agreements that the Lessee enters into in relation to the alterations or additions.
- 8.3.4 The Lessee must carry out any approved alterations and additions:
- 8.3.4.1 in a proper and workmanlike manner;
  - 8.3.4.2 in accordance with the conditions imposed by the Council (acting reasonably) and with the approvals made by Council in its capacity as lessor under this lease;
  - 8.3.4.3 in accordance with all Statutory Requirements; and
  - 8.3.4.4 in a way to minimise disturbance to others.
- 8.3.5 Unless otherwise agreed in writing between the parties, all alterations and additions to the Land or the Premises made pursuant to this clause become the property of the Council.
- 8.3.6 The Lessee must pay all of the Council's costs (including consultant's costs and legal costs) which are reasonably and properly incurred as a result of the Lessee's alterations and additions.

### 8.4 Cleaning

The Lessee must at its cost:

- 8.4.1 keep the Premises clean and tidy;
- 8.4.2 keep the Premises free of vermin, insects and other pests; and
- 8.4.3 not cause the Common Areas to be left untidy or in an unclean state or condition.

## 9. ASSIGNMENT, SUBLETTING AND CHARGING

### 9.1 Assignment

The Lessee may, subject to the Act, only assign its interest in this lease if:

- 9.1.1 the proposed assignee does not change the Permitted Use;
- 9.1.2 the proposed assignee is able to meet the financial obligations under this lease; and

9.1.3 the Lessee has complied with the Council's procedural requirements for obtaining the Council's consent.

**9.2 Subletting and licensing**

Subject to special condition 2 of Schedule 2, the Lessee must not sublet or license any part of the Premises without the Council's consent.

**9.3 Hiring out Premises**

Subject to special condition 2 of Schedule 2, the Lessee must not hire out or otherwise part with possession of the Premises without the Council's consent.

**9.4 Costs**

The Lessee must pay all costs reasonably and properly incurred by the Council (including the costs of any consultant or any legal fees) in relation to any dealing with the Premises, including in considering whether or not to grant consent under clause 9.1 of this lease.

**10. LESSEE GOVERNANCE**

10.1 On or before the Commencement Date the Lessee must provide to the Council a copy of the Lessee's constitution and any other documents that regulate its governance and operations.

10.2 The Lessee must provide to the Council within seven (7) days of written request any information in relation to the Lessee's use and occupation of the Premises as may be reasonably required by the Council.

**11. COUNCIL'S OBLIGATIONS AND RIGHTS**

**11.1 Quiet enjoyment**

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

**11.2 Right to enter**

The Council may (except in an emergency when no notice is required) enter the Premises after giving the Lessee reasonable notice:

11.2.1 to see the state of repair of the Premises;

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

11.2.3 to do anything the Council must or may do under this lease or must do under any Legislation or to satisfy the requirements of any Statutory Authority; and

11.2.4 in the final two (2) months of the Term, to show prospective lessees through the Premises.

### 11.3 **Emergencies**

In an emergency the Council may:

- 11.3.1 close the Premises or Building; and
- 11.3.2 prevent the Lessee from entering the Premises or Building.

### 11.4 **Works and restrictions**

11.4.1 The Council may:

- 11.4.1.1 install, use, maintain, repair, alter, and interrupt Building Services;
- 11.4.1.2 carry out works on the Building (including extensions, renovations and refurbishment); and
- 11.4.1.3 close (temporarily or permanently) and restrict access to the Common Areas.

11.4.2 The Council must (except in an emergency) take reasonable steps to minimise interference with the Lessee's use and occupation of the Premises.

### 11.5 **Right to rectify**

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

### 11.6 **The Building**

To the extent that it is not an obligation of the Lessee under this lease, the Council shall at all times during the Term and at its own cost:

- 11.6.1 keep and maintain the Building, the Land, the Council's Equipment and the Common Areas in good repair;
- 11.6.2 keep current the insurance in relation to the Building, Land and the Common Areas for the full reinstatement value; and
- 11.6.3 keep and maintain all fire exits at the Premises and the Land in compliance with all Statutory Requirements.

## 12. **DAMAGE OR DESTRUCTION**

### 12.1 **Termination for destruction or damage**

12.1.1 If the Premises are destroyed or are damaged so that they are unfit for the Lessee's use then, within one (1) month after the damage or destruction occurs, the Council must give the Lessee either:

- 12.1.1.1 a notice terminating this lease (on a date at least one (1) month after the Council gives notice); or

12.1.1.2 a notice advising the Lessee that the Council intends to repair the Premises and/or the Building so that the Premises are accessible and the Lessee can occupy and use the Premises (**Intention to Repair Notice**).

12.1.2 If the Council gives an Intention to Repair Notice but does not carry out the repairs within a reasonable time, the Lessee may give notice to the Council that the Lessee intends to end this lease if the Council does not make the Premises accessible and fit for use and occupation by the Lessee within a reasonable time (having regard to the nature of the required work) (**Intention to Terminate Notice**).

12.1.3 If the Council does not give a notice under this subclause or does not take the action specified in the Intention to Terminate Notice, the Lessee may end this lease by giving the Council not less than one (1) month's notice.

## 12.2 Reduction or abatement of Rent

12.2.1 While the Premises are unfit or inaccessible, the Yearly Amounts are reduced unless:

12.2.1.1 the Premises are unfit or inaccessible; or

12.2.1.2 an insurer refuses to pay a claim;

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

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

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

## 13. REDEVELOPMENT, ASSET RATIONALISATION AND DEMOLITION

If as part of any redevelopment, asset rationalisation or other project conducted by the Council that includes the Land (**Redevelopment**), or for any other reason, the Council wishes to demolish or acquire vacant possession of the Premises or any part of the Premises, then the Council may:

13.1 terminate this lease subject to the following provisions:

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

13.1.2 at any time after providing the Lessee with those details, the Council may give the Lessee a written notice of termination of this lease (**Termination Notice**) specifying the date on which this lease is to come to an end being a date not less than six (6) months after the Termination Notice is given. Unless terminated earlier by the Lessee under clause 13.1.3, this lease comes to an end at midnight on the day specified in the Termination Notice;



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- 13.1.3 at any time after receiving a Termination Notice, the Lessee may terminate this lease by giving not less than seven (7) days' written notice to the Council; and
  - 13.1.4 when either party terminates this lease under this clause, the rights and obligations of the Council and the Lessee under this lease (except with regard to an existing breach) come to an end; rights with regard to an existing breach continue; or
- 13.2 require the Lessee, upon reasonable notice, to vacate the Premises and to occupy an alternative site owned by the Council subject to the following conditions:
- 13.2.1 the Council must provide the Lessee with details of the proposed Redevelopment sufficient to indicate a genuine proposal to carry out that Redevelopment within a reasonably practicable time after this lease is to be terminated;
  - 13.2.2 the Council may at any time after providing the Lessee with those details, give the Lessee a written notice of termination of this lease (**Relocation Notice**) specifying the date on which the Lessee must relocate being a date not less than six (6) months after the Relocation Notice is given;
  - 13.2.3 the Lessee must relocate to the alternative site on the date stipulated in the Relocation Notice and must give to the Council all assistance and cooperation necessary to give effect to this clause and to the relocation including the execution of any documents or instruments which the Council reasonably requires;
  - 13.2.4 the alternative site must, in the reasonable opinion of the Council, be of comparable quality and utility to the Premises;
  - 13.2.5 any reasonable costs incurred in relocating the Lessee must be borne by the Council; and
  - 13.2.6 the Lessee's occupation of the alternative site is on the terms in this lease (changed as necessary); or
- 13.3 negotiate with the Lessee as to the financial and maintenance contribution which is required from the Lessee in order for the Council to reconsider undertaking the Redevelopment. The Council may, at any reasonable time during these negotiations exercise any of its other rights under this clause.

#### 14. RENEWAL

- 14.1 If a right of renewal or first right of renewal is specified in Item 4 of Schedule 1 and the Lessee wishes to exercise that right of renewal, then the Lessee must give a written notice to the Council not less than 2 months and not more than 6 months before 30 September 2017 stating it wishes to renew this lease for the period specified in Item 4 of Schedule 1. If such notice is given, the Council must (subject to clause 14.2) renew this lease for the first Renewal Term on the terms in this lease (except this subclause) commencing immediately after the expiry of the initial term being 30 September 2017.

- 14.2 The Lessee is not entitled to renew this lease if:
- 14.2.1 the Lessee has been in breach of this lease at any time before giving notice of exercise of the right of renewal;
  - 14.2.2 the Lessee is in breach of this lease at the time of giving that notice; or
  - 14.2.3 the Lessee is in breach or commits a breach of this lease after giving that notice but before commencement of the Renewal Term.

## 15. RIGHTS AND OBLIGATIONS ON EXPIRY

### 15.1 Expiry

This lease comes to an end at midnight on the last day of the Term unless it is terminated earlier by the Council or the Lessee under this lease.

### 15.2 Handover of possession

- 15.2.1 Before this lease comes to an end, the Lessee must:
- 15.2.1.1 remove all of the Lessee's Equipment and repair any damage caused by such removal, unless the Council has otherwise agreed in writing;
  - 15.2.1.2 remove and reinstate any alterations or additions made to the Premises by the Lessee unless the Council has agreed in writing that such alterations and additions may remain;
  - 15.2.1.3 complete any repairs which the Lessee is obliged to carry out under this lease, unless the Council has otherwise agreed in writing.

### 15.3 Abandoned goods

If, when this lease comes to an end, the Lessee leaves any goods or equipment at the Premises, then the Council may deal with and dispose of those goods in accordance with the Act.

### 15.4 Holding over

If, with the Council's consent, the Lessee continues to occupy the Premises after the end of this lease, the Lessee does so under a monthly tenancy which:

- 15.4.1 either party may terminate on one (1) month's notice given at any time; and
- 15.4.2 is on the same terms as this lease.

## 16. BREACH

### 16.1 Payment obligations

- 16.1.1 The Lessee must make payments due under this lease:
  - 16.1.1.1 without demand (unless otherwise provided);

- 16.1.1.2 without set-off, counter-claim, withholding or deduction;
- 16.1.1.3 to the Council or as the Council directs; and
- 16.1.1.4 by direct debit or other means directed by the Council.

16.1.2 If a Payment Date does not exist, the Lessee must make any payment due on that Payment Date on demand.

## 16.2 **Set off**

The Council may, by notice to the Lessee, set off any amount due by the Lessee to the Council under this lease or otherwise against any amount due by the Council to the Lessee under this lease.

## 16.3 **Council's rights on breach**

16.3.1 The Council may come onto the Premises and remedy a breach of this lease without notice:

16.3.1.1 in an emergency; or

16.3.1.2 if the Lessee breaches any provision of this lease and fails to remedy the breach within 14 days after receiving notice requiring it to do so.

16.3.2 The Lessee must pay or reimburse the Council on demand for all reasonably and properly incurred costs of remedying the breach.

## 16.4 **Breach and re-entry**

If:

16.4.1 the Lessee fails to pay a sum of money when due and fails to remedy that failure within twenty one (21) days after receiving notice requiring it to do so;

16.4.2 the Lessee breaches any other provision of this lease and fails to remedy the breach within 21 days after receiving notice requiring it to do so;

16.4.3 the Lessee ceases to be able to pay its debts as they become due;

16.4.4 any step is taken by a mortgagee to take possession or dispose of the whole or any part of the Lessee's assets, operations or business;

16.4.5 any step is taken to enter into any arrangement between the Lessee and its creditors;

16.4.6 any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person of the whole or any part of the Lessee's assets or business;

16.4.7 the Lessee is deregistered or dissolved or any step is taken by any person towards that;

- 16.4.8 the Lessee is a natural person and commits an act of bankruptcy;
- 16.4.9 the Lessee is convicted of an indictable offence (other than a traffic offence);
- 16.4.10 execution is levied against the Lessee and not discharged within 14 days; or
- 16.4.11 the Premises are unoccupied for one (1) month or more without the Council's consent;

then despite any other clause of this lease, the Council:

- 16.4.12 may re-enter and repossess the Premises, without prejudice to its other rights; and
- 16.4.13 is discharged from any claim by or obligation to the Lessee under this lease.

#### **16.5 Rights of Council not limited**

A power or right of the Council under this lease or at law resulting from a breach or repudiation of this lease by the Lessee, or the exercise of such power or right, does not limit the Council's powers or rights.

#### **16.6 Repudiation and damages**

- 16.6.1 The following provisions are essential terms of this lease:
  - 16.6.1.1 the obligation to pay Rent;
  - 16.6.1.2 the obligation to pay Outgoings;
  - 16.6.1.3 the provisions about use of the Premises;
  - 16.6.1.4 the provisions about additions and alterations to the Premises; and
  - 16.6.1.5 the restriction on assignment, sub-letting and licensing.
- 16.6.2 The Council does not waive the essential nature of an essential term by accepting late payment of Rent or other money or by failing to exercise its rights or by delay in doing so.
- 16.6.3 Any breach of an essential term by the Lessee is a repudiation of this lease. The Council may at any time accept that repudiation, rescinding this lease.
- 16.6.4 If:
  - 16.6.4.1 the Council terminates this lease because of a breach of an essential term by the Lessee; or
  - 16.6.4.2 the Lessee repudiates this lease and the Council accepts that repudiation, rescinding this lease;

the Lessee must pay compensation to the Council including Rent and other money which the Council would otherwise have received under this lease for the balance of the Term. The Council must take reasonable steps to mitigate its losses and to endeavour to lease the Premises at a reasonable rent and on reasonable terms.

#### 16.7 **Interest on overdue amounts**

The Lessee must pay to the Council interest on any overdue amount on demand from when the amount becomes due until it is paid in full. Interest is calculated on outstanding daily balances at the Default Rate.

#### 16.8 **Landlord and Tenant Act**

A notice under section 10 of the *Landlord and Tenant Act 1936* (SA) must allow 14 days for the Lessee to remedy a breach of this lease if it is capable of remedy and to make reasonable compensation in money to the satisfaction of the Council. No period of notice is required in respect of non-payment of Rent.

### 17. **INDEMNITY AND RELEASE**

#### 17.1 **Risk**

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

#### 17.2 **Indemnity**

The Lessee is liable for and must indemnify the Council against all actions, liabilities, penalties, claims or demands for any loss, damage, injury or death incurred or suffered directly or indirectly including in connection with:

- 17.2.1 any act or omission of the Lessee;
- 17.2.2 the overflow or leakage of water or any other harmful agent into or from the Premises;
- 17.2.3 any fire on or from the Premises;
- 17.2.4 loss or damage to property or injury or death to any person caused by the Lessee, the use of the Premises by the Lessee or otherwise relating to the Premises;
- 17.2.5 a breach of this lease by the Lessee; or
- 17.2.6 the Lessee's use or occupation of the Premises.

#### 17.3 **Release**

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

#### 17.4 **Indemnities are independent**

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

## 18. GOODS AND SERVICES TAX

- 18.1 If the Council is liable to pay GST in connection with a supply under this lease then:
- 18.1.1 the Agreed Consideration for that supply is exclusive of GST;
  - 18.1.2 the Council may increase the Agreed Consideration or the relevant part of the Agreed Consideration by the GST Rate; and
  - 18.1.3 the Lessee must pay the increased Agreed Consideration on the due date for payment by the Lessee of the Agreed Consideration.
- 18.2 Where the Agreed Consideration is increased under this clause, the Council must, on or before the date on which the Agreed Consideration is payable, issue a tax invoice to the Lessee.
- 18.3 If the Lessee breaches this clause and as a result the Council becomes liable for penalties or interest for late payment of GST, then the Lessee must pay the Council on demand an amount equal to the penalties and interest.

## 19. BANK GUARANTEE

- 19.1 If Item 9 of Schedule 1 contains Bank Guarantee details, the Lessee must arrange for the immediate issue of the Bank Guarantee.
- 19.2 If the amount of the Bank Guarantee is calculated by reference to monthly instalments of Rent and if required by the Council, the Lessee must, immediately following any review or adjustment of the Rent, provide a replacement Bank Guarantee for an amount calculated by reference to the new monthly instalments of Rent (and where appropriate, reasonably estimated by the Council).
- 19.3 The Lessee must provide the Bank Guarantee and any replacement of it as security for the payment of all moneys from time to time payable by the Lessee pursuant to this lease. If the Lessee is in default under this lease, the Council may claim under the Bank Guarantee for all moneys then and subsequently due and payable under this lease and all loss, damage, costs and expenses incurred by the Council as a consequence of the default.
- 19.4 The Council may claim and the bank must make payment under the Bank Guarantee without reference to the Lessee and notwithstanding any objection, claim or direction by the Lessee to the contrary.
- 19.5 Whenever the Council has recourse to the Bank Guarantee, the Council may, by written notice to the Lessee, require the Lessee to reinstate the amount of the Bank Guarantee or provide an additional bank guarantee in relation to the amount of the claim (and any previous claims) made by the Council (**Deficiency**). Within seven (7) days of receipt by the Lessee of each notice, the Lessee must:
- 19.5.1 provide evidence to the Council of the reinstatement of the existing Bank Guarantee to its full amount; or

- 19.5.2 provide to the Council an additional bank guarantee for the amount of the Deficiency. This clause (changed as necessary) applies to that additional bank guarantee.
- 19.6 The rights of the Council under this clause do not derogate from the other rights and remedies available to the Council under this lease or at law or in equity in relation to any default of the Lessee.
- 19.7 Upon the expiration of the Term and the vacation of the Premises by the Lessee in accordance with this lease, provided the Lessee is not then in default, the Council must release the Bank Guarantee to the Lessee.
- 19.8 If the benefit of this lease is assigned by the Council to any person, the benefit of the Bank Guarantee extends to and is taken to be assigned to the assignee. The Lessee must do all things necessary to give effect to that assignment including providing a replacement Bank Guarantee in favour of the assignee if requested to do so by the Council.
- 19.9 The amount of the Bank Guarantee does not limit the amount the Council may recover from the Lessee.

## 20. RESUMPTION

- 20.1 The Council may terminate this lease by giving at least three (3) months' written notice to the Lessee if the Council receives notice of resumption or acquisition of the Premises or the Building or Land (or any part of the Building or Land affecting the Premises) from or by any Statutory Authority governmental or semi-governmental body.
- 20.2 Termination of this lease under this clause releases each party from further liability under this lease, but does not affect a party's rights or liabilities for a prior breach.

## 21. MISCELLANEOUS

### 21.1 Approvals and consents

Unless otherwise provided, the Council may in its discretion give (conditionally or unconditionally) or withhold any approval or consent under this lease.

### 21.2 Entire agreement

This lease:

- 21.2.1 constitutes the entire agreement between the parties about the Premises;
- 21.2.2 supersedes any prior understanding, agreement, condition, warranty, indemnity or representation about the Premises.

### 21.3 Waiver

If the Council accepts or waives any breach by the Lessee, that acceptance or waiver cannot be taken as an acceptance or waiver of any future breach of the same obligation or of any other obligation under this lease.

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21.4 **Exercise of power**

21.4.1 The failure, delay, relaxation or indulgence by a party in exercising a power or right under this lease is not a waiver of that power or right.

21.4.2 An exercise of a power or right under this lease does not preclude a further exercise of it or the exercise of another right or power.

22. **NOTICE**

22.1 A notice, demand, consent, approval or communication under this lease (**Notice**) must be in writing, in English and signed by a person authorised by the sender.

22.2 Without excluding any other method, Notice is sufficiently given:

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

22.2.2 to the Council, if posted by pre-paid post to the Council at its principal place of business in South Australia (which is taken to be the address stated in this lease unless the Lessee is or ought reasonably be aware that that is not the Council's principal place of business at the relevant time).

22.3 Notice given by pre-paid post is deemed to have been given three (3) Business Days after posting.

22.4 If two or more people comprise a party, notice to one is effective Notice to all.

23. **COSTS**

23.1 Each party will bear its own costs in respect of the preparation, negotiation, execution and stamping of this lease.

23.2 On request, the Lessee must pay or reimburse to the Council all legal and other costs incurred by the Council in consequence of any actual breach by the Lessee under this lease or in exercising or enforcing (or attempting to do so) any rights or remedies of the Council under this lease or at law or otherwise arising in consequence of any actual breach by the Lessee.



## Schedule 1

<b>Item 1</b> Premises	The portion of the land comprised in Certificate of Title Volume 6037 Folio 165 being the areas outlined in the plan in Annexure A
<b>Item 2</b> Land	The whole of the land comprised in Certificate of Title Volume 6037 Folio 165
<b>Item 3</b> Term	One (1) year commencing on 1 October 2016 ( <b>Commencement Date</b> ) and expiring at midnight on 30 September 2017
<b>Item 4</b> Renewal Term	One (1) right of renewal of one (1) year commencing on 1 October 2017 and expiring at midnight on 30 September 2018
<b>Item 5</b> Rent	Four Thousand Five Hundred and Twenty Eight Dollars and Twenty Cents (\$4,528.00) per annum (exclusive of GST)
<b>Item 6</b> Outgoings	<p><b>Outgoings</b> means the total of all amounts paid or payable by the Council in connection with the ownership, management, administration and operation of the Building including:</p> <ol style="list-style-type: none"> <li>1. the amount of any excess or deductible paid under any insurance policy taken out by the Council where such excess or deductible is payable as a result of or in connection with any act or omission of the Lessee (or any person authorised by the Lessee), any breach of this lease by the Lessee or the Lessee's use and occupation of the Premises; and</li> <li>2. all costs of the Council in connection with the operation, supply, maintenance, repair, replacement and renovation of Building Services and all other facilities within the Common Areas or elsewhere in the Building that serve the Premises and are provided from time to time.</li> </ol>
<b>Item 7</b> Permitted Use	Creative retail incubator comprising short and long term capsule stores/studios, workshops, exhibitions and events, art gallery and community meeting space, cafe and ancillary purposes, with no greater than 25% floor space dedicated to retailing commercially mass produced goods
<b>Item 8</b> Public risk insurance	\$20,000,000.00
<b>Item 9</b> Bank Guarantee	Not applicable (refer special condition 4)

## Schedule 2 - Special conditions

Whilst **Brick and Mortar Creative Pty Ltd** ABN 80 600 958 629 is the lessee under this lease and is in actual occupation of the Premises the following special conditions 1 to 4 apply.

### 1. INCENTIVE

Subject to the Lessee not being in breach of its obligations under this lease, the Lessee is provided an incentive by reducing the Rent otherwise payable under this lease to \$1.00 plus GST per annum (if demanded) for the twelve (12) month period commencing on the Commencement Date and the Renewal Term.

### 2. SUBLETTING, LICENSING AND HIRING

2.1 Notwithstanding clause 9.2 of this lease, the Lessee may with the prior written consent of the Council sublease, licence or hire any part of the Premises during the Term but strictly in accordance with the following terms and conditions:

2.1.1 the Lessee must give prior written notice to the Council of the proposed sublease or licence;

2.1.2 the Lessee must provide the Council with such information regarding the identity and other details of the sublessee or licensee and the terms and conditions of the proposed lease or licence as the Council reasonably requires;

2.1.3 where the Council grants its written consent to the proposed sublease or licence, the Lessee must ensure that the sublessee or licensee enters into a sublease or licence which is not inconsistent with the terms of this lease and which includes:

2.1.3.1 a certified exclusionary clause in accordance with section 20K of the Act; and

2.1.3.2 acknowledges to the Council that the terms and existence of the sublease or licence do not in any way derogate from or prejudice the liability of the Lessee under this lease.

2.1.4 If the Council considers (in its absolute discretion) that the purpose, and/or commercial terms of the proposed sublease or licence are inconsistent with the grant of this lease then the Council may either refuse its consent, or grant its consent on such further terms and conditions it deems appropriate.

### 3. BUILDING SERVICES

Despite clause 8.1, the Lessee will not be responsible for the costs of any maintenance, repairs or replacement of the Building Services unless the need for such maintenance, repairs or replacement was caused by the act, omission, negligence, default or misuse of the Lessee.

#### 4. **BANK GUARANTEE**

The Council will not require from the Lessee a Bank Guarantee as required by clause 19.

The following special conditions 5 to 10 apply irrespective of whoever is the Lessee.

#### 5. **AIRCONDITIONING**

The Lessee covenants and agrees with the Council for and throughout the Term:

- 5.1 where any plant, machinery or equipment for heating, cooling or circulating air or any related services, controls or appliances are provided or installed by the Council in the Premises or in the Building for the benefit of the Premises (**Airconditioning Plant**) to install separate meters at its own cost for the use of the Airconditioning Plant by or to the Premises within seven (7) days of the date of execution of this lease, or such longer period as agreed by the Council at the request of the Lessee, and in any event by the Commencement Date;
- 5.2 to pay all costs and expenses of the consumption of electricity by the Airconditioning Plant as separately metered for the Premises;
- 5.3 to comply with and observe the reasonable requirements of the Council in respect of the Airconditioning Plant;
- 5.4 that to the maximum extent permitted by law the Council shall be under no liability to the Lessee in respect of the Council's inability or failure to service, maintain, replace or repair the Airconditioning Plant at any time for any reason and the Lessee acknowledges that the Council does not warrant that the Airconditioning Plant is suitable or adequate for the business to be conducted in the Premises by the Lessee; and
- 5.5 to permit the Council and all persons authorised by the Council at all reasonable times on giving to the Lessee reasonable prior notice (except in the case of emergency where no notice is required) to enter the Premises to view the state of repair of the Airconditioning Plant and there remain for the purpose of carrying out any necessary or desirable maintenance servicing or repair to or replacement of the Airconditioning Plant.

#### 6. **SECURITY**

- 6.1 The Council makes no representations or warranties in relation to the security system located in the Premises (**Security System**) and takes no responsibility or liability in respect of its performance or non-performance.
- 6.2 The Lessee's use of the Security System is at the Lessee's cost in all respects and at its own risk.

#### 7. **ENTRY HALL**

- 7.1 The Lessee acknowledges that located within the entry hall to the Premises identified as '1' on the plan forming Annexure A to this lease, is a gas meter and electrical switchboard for the Building (**Meter and Switchboard**).

- 7.2 The Council reserves to itself a right to access and use the Meter and Switchboard, and to repair, maintain, upgrade and do any other works or things that may be required (in the Council's discretion) from time to time to the Meter and Switchboard, from time to time and at any time during the Term.
- 7.3 The Lessee acknowledges that its rights pursuant to this lease are limited to the extent of the Council's rights described in special condition 7.2.
- 7.4 The Lessee further acknowledges and agrees that:
- 7.4.1 it must not interfere with, or obstruct, the Council's exercise of its rights pursuant to special condition 7.2;
- 7.4.2 it must not access, or interfere with, the Meter and Switchboard.
- 7.5 The Lessee must indemnify the Council for any loss or damage suffered as a result of it failing to comply with the requirements of special condition 7.4.

## 8. RESTRICTION ON FLOOR LOADING

- 8.1 The Lessee must not without the Council's prior written consent bring on to the Premises any machinery, plant or equipment of such weight, size or nature as (in the Council's opinion) may cause any structural or other damage to the Building or the Premises or unreasonable noise or vibrations.
- 8.2 The Lessee must inform the Council of the Lessee's intention to bring any such machinery, plant and equipment on to the Premises and the Lessee must comply with all directions of the Council as to the installation and location of such machinery, plant and equipment.
- 8.3 In addition the Lessee must not cause or allow any machinery, plant, equipment or item of any nature on the ground floor of the Premises which has a load bearing of 300kg per sqm or greater.

## 9. COUNCIL'S RIGHT TO TERMINATE THIS LEASE

The Council and the Lessee covenant and agree that:

- 9.1 this lease may be terminated at any time from the commencement of the Renewal Term by the Council on the Council giving to the Lessee at least ninety (90) days written notice of its intention to terminate (**Termination Notice**);
- 9.2 if the Termination Notice is given in accordance with special condition 9.1, this lease will terminate on the expiration of ninety (90) days after the service of the Termination Notice or such further period (if any) as may be agreed in writing between the Council and Lessee (**Termination Date**);
- 9.3 on the termination of this lease pursuant to this special condition, neither party will have any claim against the other in relation to such termination but without prejudice to:
- 9.3.1 the rights of either party for any antecedent breach or default; and

- 9.3.2 the Lessee's obligations to rectify and make good the Premises on or before the Termination Date; and
- 9.4 if this lease is terminated pursuant to this special condition 9, the Lessee will promptly on receipt execute a Deed of Surrender of this lease (in such format as the Council requires) which Surrender will be prepared and stamped by the Council's solicitors.

## 10. **EXCLUSION OF STATUTORY FIVE YEAR TERM**

- 10.1 The Lessee acknowledges and agrees that:
  - 10.1.1 neither section 20B(1) of the *Retail and Commercial Leases Act 1995* (SA) nor the statutory five year term under section 20B(1) apply to this lease (including that they do not apply for any holding over period which exceeds six months); and
  - 10.1.2 this lease is conditional upon the Lessee obtaining, and providing to the Council, the certificate in Annexure B signed by a lawyer who is acting for the Lessee so that the minimum statutory five year term does not apply to this lease.

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**EXECUTED** as an agreement

**COUNCIL**

**Signed for The Corporation of the City of Norwood Payneham & St Peters** by its authorised delegate in the presence of:

.....  
Signature of witness

.....  
Signature of authorised delegate

.....  
Name of witness (print)

.....  
Name of authorised delegate (print)

.....  
Position of authorised delegate

**LESSEE**

**Executed by Brick and Mortar Creative Pty Ltd** ACN 600 958 629 pursuant to section 127 of the *Corporations Act 2001*

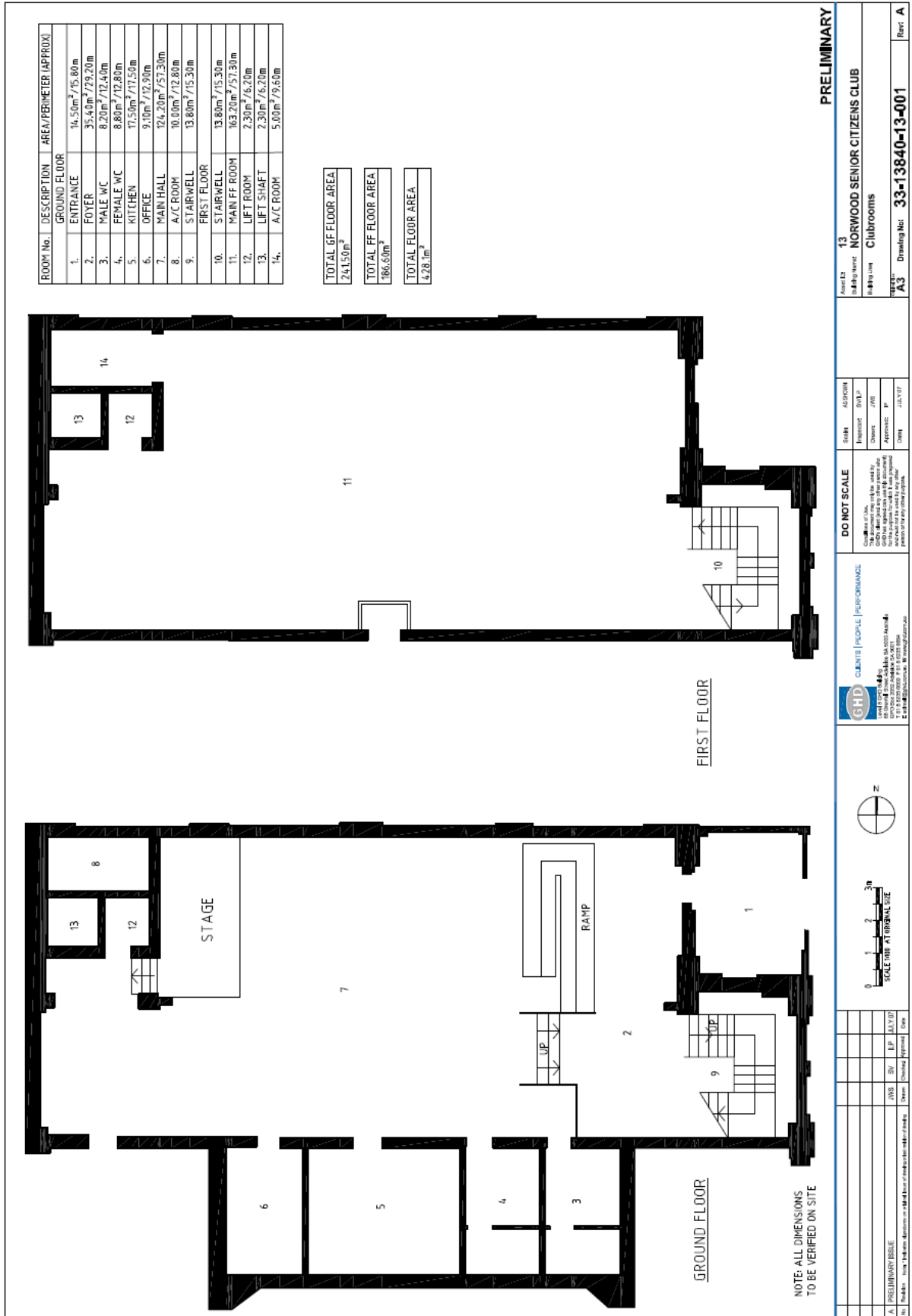
.....  
Signature of Director

.....  
Signature of Director/Company Secretary  
(Please delete as applicable)

.....  
Name of Director (print)

.....  
Name of Director/Company Secretary (print)

Annexure A Plan



PRELIMINARY

Project No.	13
Building Name	NORWOOD SENIOR CITIZENS CLUB
Room No.	Clubrooms
Sheet No.	A3
Drawing No.	33-13840-13-001
Rev.	A

**DO NOT SCALE**  
This document is for use only by the client. It is not to be used for any other purpose. All dimensions are to be verified on site. All areas are approximate. All areas are to be verified on site.

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DATE	11 October 2017
BY	JWB
CHKD	BR
DATE	11 October 2017
BY	JWB
CHKD	BR
DATE	11 October 2017
BY	JWB
CHKD	BR
DATE	11 October 2017
BY	JWB
CHKD	BR

NOTE: ALL DIMENSIONS TO BE VERIFIED ON SITE

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**Annexure B     Lawyer's Certificate**

**CERTIFIED EXCLUSIONARY CLAUSE UNDER SECTION 20K(3) OF *RETAIL AND COMMERCIAL LEASES ACT 1995 (SA)***

1.     This certificate is given in relation to the following:

Exclusionary clause:

**Clause 3, special conditions 9 and 10**

The clause excludes the statutory rights of security of tenure conferred by Part 4A of the *Retail and Commercial Leases Act 1995 (SA)*.

The lease is one of the following premises:

49 George Street, Norwood SA 5067 as delineated in the plan attached as Annexure A of the lease

The Lessor is:

**The Corporation of the City of Norwood Payneham & St Peters**

The prospective lessee is:

**Brick and Mortar Creative Pty Ltd ABN 80 600 958 629 of 49 George Street, Norwood SA 5067**

2.     I do not act for the lessor.

3.     I have, at the request of the prospective lessee(s), explained the effect of the exclusionary clause and how Part 4A of the *Retail and Commercial Leases Act 1995 (SA)* would apply in relation to the lease if the lease did not include that clause.

4.     The prospective lessee has given me apparently credible assurances that the prospective lessee was not acting under coercion or undue influence in requesting or consenting to the inclusion of the clause in the lease.

Lawyer signing certificate: .....[full name]

.....

..... [address]

Date:.....

Signature: .....