

Dealing Number



Privacy Statement

The information from this form is authorised by the Land Title Act 1994, the Land Act 1994 and the Water Act 2000 and is used to maintain the publicly searchable registers in the land registry and the water register. For more information about privacy in DNRM see the department's website.

1. Trustee	Lodger (Name, address & phone number)	Lodger Code
IPSWICH CITY COUNCIL AS TRUSTEE ABN 61 461 981 077	IPSWICH CITY COUNCIL PO BOX 2286 NORTH IPSWICH QLD 4305 Phone: 3810 6666 Propertyrequests@ipswich.qld.gov.au	IH117

2. Lot on Plan Description	Title Reference
LOT 638 ON SP157096	49005736

3. Trustee Permittee	Given names	Surname/Company name and number	(include tenancy if more than one)
		ANZAC PARK SPORTS AND RECREATION CLUB INCORPORATED	

4. Interest being leased
RESERVE R284

5. Description of premises being leased
LEASE B IN LOT 638 ON SP157096 ON SP307623

6. Term of lease trustee permit	7. Rental/Consideration
Commencement date: / / Expiry date: / / Options: NIL	AS PROVIDED IN THE ATTACHED SCHEDULE

8. Grant/Execution
The trustee grants a trustee permit of the premises described in item 5 to the trustee permittee for the term stated in item 6 subject to the covenants and conditions contained in the attached schedule.

Witnessing officer must be aware of his/her obligations under section 162 of the Land Title Act 1994

.....signature
.....full name	Execution Date
.....qualification	David Brian Farmer Chief Executive Officer for IPSWICH CITY COUNCIL Trustee's Signature

Witnessing Officer

(Witnessing officer must be in accordance with Schedule 1 of the Land Title Act 1994 eg. Legal Practitioner, JP, C Dec)

9. Acceptance
The trustee permittee accepts the trustee permit and acknowledges the amount payable or other considerations for the trustee permit.

Witnessing officer must be aware of his/her obligations under section 162 of the Land Title Act 1994

The common seal of **ANZAC PARK SPORTS AND RECREATION CLUB INCORPORATED** is affixed by authority of the management committee in the presence of

.....signature
.....full name	Execution Date
.....qualification	John Barry Turner Secretary

Witnessing Officer
.....Signature
.....full name	Execution Date
.....qualification	John Peter Sbeghen President/Committee Member Permittee's Signature

Witnessing Officer

(Witnessing officer must be in accordance with Schedule 1 of the Land Title Act 1994 eg. Legal Practitioner, JP, C Dec)

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1 Definitions and interpretation

1.1 Definitions

These definitions apply to terms used in this Trustee Permit, except to the extent that the context indicates a contrary intention.

Term	Definition
Act	means the <i>Land Act 1994</i> .
Commencement Date	means the date specified as the commencement date in item 6 of the Form 7.
Council	means the Ipswich City Council or, if another entity becomes the trustee of the Trust Land under the Act, the trustee (and, in either case, includes, when consistent with the context, any officer of the Ipswich City Council or the trustee who is authorised to administer the relevant provisions of the Trustee Permit.
Council Property	means all plant and equipment, fixtures, fittings, furniture, furnishings and decorations and other property in, on or fixed to the Premises that are made available by the Council.
Expiry Date	means the date specified as the expiry date in item 6 of the Form 7.
GST	means any goods and services or similar tax imposed at the point of sale or time of supply on the supply of goods, services or other things in Australia.
Input Tax Credit	means any GST paid on the supply of goods, services or other things for which the recipient of the supply is entitled to a refund or a credit against other GST otherwise payable by the person.
Insolvent	means: <ul style="list-style-type: none">(a) for a natural person:<ul style="list-style-type: none">(1) the committing of an act of bankruptcy;(2) being made bankrupt; or(3) being subject to an arrangement under Part IX or Part X of the <i>Bankruptcy Act 1966</i>;(b) for a corporation:<ul style="list-style-type: none">(1) the making of an order for the winding up or reconstruction of the corporation;(2) being under administration or subject to a deed of company arrangement under Part 5.3A of the <i>Corporations Act 2001</i>;(3) the appointment of a receiver, receiver and manager, agent in possession, trustee or guardian in respect of any or all of the property of the corporation;(4) the corporation being taken under section 459F of the <i>Corporations Act 2001</i> to have failed to comply with a statutory demand; or(5) the occurrence of an event of the kind described in section 461(1) of the <i>Corporations Act 2001</i> making the corporation liable to be wound up by the court; and(c) for an incorporated association:

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Term	Definition
	(1) being wound up under section 89 of the <i>Associations Incorporation Act 1981</i> ; (2) being wound up under section 90 of the <i>Associations Incorporation Act 1981</i> ; (3) incorporation being cancelled under section 93 of the <i>Associations Incorporation Act 1981</i> ; or (4) any other event of the same, or substantially similar, effect as those specified in paragraph (b) of this definition in relation to corporations.
Insured Risks	means those disabling causes against which the Council insures in respect of the Premises from time to time.
KPIs	is defined in clause 7.1(1)(a).
Manager	means the General Manager (Infrastructure and Environment) of the Council (including a person acting in that position) or such other position within the Council as is nominated by the Council from time to time.
Minimum Operating Hours	means, on each day other than Christmas Day and Good Friday, from 10am to 6pm with the exception of a period on each day during those hours not
Minister	means the Minister administering the Act from time to time.
Permitted Use	means recreation purposes, specifically the operation and management of hall operations associated with that purpose.
Permittee	is the person named in item 3 of the Form 7.
Permittee Property	means all plant and equipment, fixtures, fittings, furniture, furnishings and decorations and other property in, on or fixed to the Premises that are not Council Property.
Premises	means the part of the Trust Land identified in the plan attached to this Trustee Permit.
Quarter	means each period of 3 months ending on 31 March, 30 June, 30 September and 31 December in each year.
Rent	means \$1.00 per annum if demanded (plus any applicable GST)
Services	means the services provided by Council or other authorities to the Premises including, but not limited to, electricity, gas, water, sewerage, air conditioning, fire control and communications together with all plant and equipment relating to those services.
Trust	is defined in clause 10.4.
Trust Land	Means Lease B in Lot 638 on SP157096 on SP307623, title reference 49005736.
Trustee Permit	means, depending on the context: (a) this document; or (b) the rights conferred on the Permittee by this document.
WHSMS	is defined in clause 4.4(3)(a).

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1.2 Interpretation

In this Trustee Permit:

- (1) a reference to a person includes the person's executors, administrators, successors, assigns, substitutes and persons who take by novation;
- (2) where a party is more than one person, each person is bound as an individual and they are all bound together;
- (3) headings have been inserted for guidance only and do not affect the interpretation of this Trustee Permit;
- (4) a reference to a statute (or a statutory instrument) includes its amendments and replacements (including statutes and statutory instruments dealing with the same or substantially similar subject matter) and the regulations and other statutory instruments under it and them; and
- (5) defined terms have the meanings given them in this Trustee Permit, whether written in the upper case, lower case, or both upper and lower case.

1.3 General and specific provisions

- (1) If:
 - (a) a provision of this Trustee Permit (the **specific provision**) imposes an obligation on the Permittee; and
 - (b) that obligation would, whether or not the specific provision was in this Trustee Permit, have fallen within the scope of another provision of this Trustee Permit (the **general provision**) that imposes a wider or more general obligation on the Permittee, then:
 - (c) the general provision is not to be read down by reference to, or because of the inclusion in this Trustee Permit of, the specific provision; and
 - (d) if an act, omission, event or circumstances arise that constitutes a breach of the specific provision, the Council may treat it as a breach of the specific provision or of the general provision or of both.
- (2) If:
 - (a) a provision of this Trustee Permit (the **specific provision**) confers a power or right on the Council or the Manager or both; and
 - (b) that power or right would, whether or not the specific provision was in this Trustee Permit, have fallen within the scope of another provision of this Trustee Permit (the **general provision**) that confers a power or right on the Council or the Manager or both, then:
 - (c) the general provision is not to be read down by reference to, or because of the inclusion in this Trustee Permit of, the specific provision; and
 - (d) the Council or the Manager or both may exercise the power or right under the specific provision or under the general provision or under both.

2 Grant and duration of Trustee Permit

2.1 Grant

- (1) Subject to the other provisions of this Trustee Permit, the Council grants to the Permittee a trustee permit under the Act.
- (2) The Permittee accepts the grant of the Trustee Permit.

2.2 Duration

- (1) The term of the Trustee Permit starts on the Commencement Date.

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- (2) The term of the Trustee Permit ends on the earlier of:
- (a) the Expiry Date; or
 - (b) the Trustee Permit being terminated or cancelled under the provisions of the Trustee Permit or the Act.

2.3 Limitations

- (1) The Trustee Permit does not give the Permittee:
- (a) any right to use any of the Trust Land after the term of the Trustee Permit ends;
 - (b) a right to renew the Trustee Permit; or
 - (c) a right to be given a more secure tenure over the Trust Land.
- (2) If the Premises are not the whole of the Trust Land, the Trustee Permit does not authorise the Permittee to use any part of the Trust Land other than the Premises.

3 Financial matters

3.1 Rent

On the Commencement Date, the Permittee must pay the Rent to the Council.

3.2 Specific outgoings

- (1) The Permittee must pay on time:
- (a) all assessments for Services supplied to the Premises, including telephone, water, electricity and gas;
 - (b) all assessments for Services supplied to the Premises by a government or local government (including the Council itself), including waste services;
 - (c) all salaries, wages and related costs and expenses incurred in the employment or engagement of employees or contractors by or for the Permittee at the Premises or in connection with the business operated at or from the Premises;
 - (d) all expenses incurred in complying with the Permittee's obligations under the Trustee Permit;
 - (e) all expenses incurred by or for the Permittee in advertising and marketing the Premises or the business carried on at or from the Premises; and
 - (f) general materials and products used in operating the Premises or the business carried on at or from the Premises.
- (2) The Council will pay any local government general rates assessed against the Premises.

3.3 Costs

The Permittee must pay:

- (1) Their own legal and other costs, charges and expenses (on a full indemnity basis) incidental to:
- (a) preparing, negotiating and stamping the Trustee Permit;
 - (b) an application for a consent under the Trustee Permit even if consent is not given;
 - (c) a surrender, termination, cancellation, attempted termination or attempted cancellation of the Trustee Permit;
 - (d) any lawful notice given to the Permittee under the Trustee Permit;
 - (e) any proceedings which the Council brings to enforce the Permittee's performance of the Trustee Permit; and
 - (f) any other costs which the Council incurs because the Permittee breaches the Trustee Permit; and

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- (2) registration fees payable on:
 - (a) the Trustee Permit;
 - (b) any plan necessary for the registration of the Trustee Permit;
 - (c) any amendment or variation of the Trustee Permit; and
 - (d) any surrender, termination or cancellation of the Trustee Permit.

3.4 GST

- (1) All amounts which the Permittee is required to pay to the Council under the Trustee Permit (including but not limited to rent) are exclusive of GST.
- (2) If the Council is required to pay GST for a supply by the Council under the Trustee Permit, the Permittee must pay an additional amount to the Council equal to the GST payable. Any such additional amount must be paid by the Permittee to the Council on the due date of payment for the supply on which the GST is payable.
- (3) The Council must not later than seven days before the date the Permittee is required to pay to Council the increased amount for GST (or such other period as may be prescribed by law) provide to the Permittee a tax invoice.
- (4) If a payment to a party under this Trustee Permit is a reimbursement or indemnification calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any Input Tax Credit to which that party is entitled for that loss, cost or expense.

4 Use of Premises

4.1 Permitted Use

- (1) The Permittee must use the Premises only for the Permitted Use and associated storage.
- (2) The Permittee represents and warrants that it has relied exclusively on its own enquiries in connection with this Trustee Permit and not on any representation or warranty made by the Council or on the Council's behalf except as set out in this Trustee Permit and that the Council has not represented and warranted that the premises are suitable or may be used for the Permitted Use.

4.2 Uses with written consent

The Permittee must not, without the prior written consent of Council:

- (1) use any form of light, power or heat other than electrical current or gas supplied through meters (except auxiliary power or lighting, other than an exposed flame, during power failures or restrictions) on the Premises; or
- (2) interfere with any Services.

4.3 Compliance

- (1) The Permittee must comply with all laws and local government requirements and all notices, orders, requisitions and requirements issued under those laws and local government requirements and which relate to:
 - (a) the Premises;
 - (b) the Council Property; and
 - (c) the Permittee's use and occupation of the Premises.
- (2) Without limitation, this includes all local laws made by the Council or by the local government whose local government area from time to time includes the Premises. If there is any inconsistency between a provision of this Trustee Permit and a provision of any of those local laws, the provision of the local law prevails to the

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extent of the inconsistency. However, there is no inconsistency just because one of the provisions is more onerous on the Permittee.

4.4 Management

- (1) The Permittee must comply with the reasonable requirements of the Council or the Manager in relation to the proper management of the Premises, for example cleanliness, control of vermin, emergency drills and procedures, and installation, operation and maintenance of equipment.
- (2) The Permittee must ensure that the Premises and the Permittee's use of the Premises comply at all times with:
 - (a) all statutory health and safety obligations including, but not limited to, obligations under:
 - (i) the *Workplace Health and Safety Act 1995*;
 - (ii) the *Fire and Rescue Service Act 1990*;
 - (iii) the *Environmental Protection Act 1994*; and
 - (iv) the *Dangerous Goods Safety Management Act 2001*; and
 - (b) all obligations under all other laws and the requirements of all authorities including, but not limited to, obligations under:
 - (i) the *Food Act 2006*; and
 - (ii) the *Public Health Act 2005*.
- (3) The Permittee must:
 - (a) at all times have in place a documented workplace health and safety management system (**WHSMS**);
 - (b) ensure that the WHSMS is at all times suitable for the nature of the activities carried on at or from the Premises so as to ensure compliance with all applicable legal requirements relating to health and safety at the Premises, including (but not limited to):
 - (i) the Permittee's safety policy;
 - (ii) the identification of a responsible person for the Premises and his or her responsibilities;
 - (iii) safety procedures;
 - (iv) training and induction;
 - (v) inspection and test plan and audit processes; and
 - (vi) safety records;
 - (c) give the Council a full copy of the WHSMS whenever the Council asks for it;
 - (d) give the Council any evidence the Council requests to demonstrate whether the Permittee has complied with, or is complying with, its WHSMS; and
 - (e) comply with a request under paragraph (c) or (d) promptly and, in any event, within 7 days.

4.5 Proper use of facilities

- (1) The Permittee must use the toilets, sinks, drainage and plumbing facilities in the Premises only for the purpose for which they were constructed or provided, and must not deposit any rubbish in those facilities.
- (2) The Permittee must promptly make good any damage it causes or caused by the Permittee's employees, members, guests or invitees to the reasonable satisfaction of the Council.
- (3) The Permittee must only prepare or cook food in an area installed and properly equipped for those purposes.
- (4) The Permittee must prohibit smoking within all buildings and grounds of the Premises.

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4.6 Prohibitions

The Permittee must not:

- (1) obstruct access to, overload or otherwise interfere with or damage Services;
- (2) damage or destroy anything on the Premises;
- (3) do anything dangerous, noxious, annoying, offensive, immoral or illegal on the Premises;
- (4) do anything to pollute the Premises or its environment; or
- (5) without the Council's approval, keep or use inflammable explosive or volatile materials on the Premises.

4.7 Signs and installations

The Permittee must not display any signs or place any installations on the Premises without the prior written consent of the Council.

4.8 Cleanliness and security

The Permittee must:

- (1) keep the Premises thoroughly clean;
- (2) properly clean the floors, windows, shopfront and any other area accessible or visible to the public on a daily basis
- (3) notify the Trustee about any infectious disease at the Premises, and must disinfect and fumigate the Premises to rid them of the disease;
- (4) keep the Premises free from weeds, pests, rodents, termites, cockroaches, vermin, and must have the premises preventatively sprayed or treated for rodents, termites, cockroaches, vermin and pests:
 - (a) as often as it is reasonable to expect it to be done; and
 - (b) in any event, whenever the Trustee requires (but no more than once per year).
- (5) remove any useless property from the Premises;
- (6) remove all wet refuse daily and all other refuse periodically from the Premises;
- (7) not allow rubbish to build up in the Premises and must ensure that all rubbish is regularly removed from the Premises; and
- (8) store all refuse in proper receptacles located in the Premises; and
- (9) must keep all exterior doors and windows in the Premises locked when nobody is at the Premises;
- (10) The Trustee may (but has no obligation to) enter the Premises to:
 - (a) lock any doors and windows; or
 - (b) check the general security of the Building.

4.9 Fire regulations

The Permittee must:

- (1) comply with insurance regulations and any lawful directions given by the Council or competent authority;
- (2) pay to the Council the cost of any alterations to the sprinklers or fire alarm installation which is necessary because the Permittee has not complied with the regulations and requirements of a local authority, the Insurance Council of Australia or the Council's insurer;
- (3) carry out fire drills when required;
- (4) comply with emergency evacuation procedures;

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- (5) appoint fire controllers and fire wardens;
- (6) give the Council written reports or other evidence as and when required by, and satisfactory to, the Council to show that the Permittee has complied with its obligations under this clause; and
- (7) not use any flammable substance at the Premises other than in the ordinary course of the Permitted Use.

5 Repairs and alterations

5.1 General repair and maintenance obligations

- (1) The Permittee, must at its expense, keep the Premises and the Council Property in good repair and working order.
- (2) The Permittee's obligation under subclause (1) does not extend to damage:
 - (a) caused by reasonable wear and tear; or
 - (b) caused by Insured Risks - unless the Permittee caused or contributed to the damage so that the Council is either unable to make an insurance claim or to recover the full amount that would otherwise have been paid out by the insurance company to the Council, and unless subclause (3) says the obligation extends to the damage.
- (3) The Permittee's obligation under subclause (1) does, however, extend to damage caused by a risk for which the Permittee is required to hold insurance under the Trustee Permit (regardless of whether the Permittee actually holds insurance against the risk or can recover on any insurance and regardless of whether the risk also happens to be an Insured Risk).
- (4) The Permittee is expressly required to do structural work that is necessary for the Permittee to fulfil its obligations under this clause (but subject to clause 5.3).

5.2 Specific repair and maintenance obligations

- (1) The Permittee must promptly and at its expense:
 - (a) restore the finishes of the interior of the Premises to their original condition in a proper and workmanlike manner to the satisfaction of the Council as often as the Council reasonably requires; and
 - (b) repair and replace all:
 - (i) broken glass (irrespective of the cause) with glass of the same or substantially similar quality;
 - (ii) damaged or broken lighting and electrical equipment (including light globes, starters and fluorescent tubes);
 - (iii) damaged or broken heating equipment due to misuse or incorrect operation
 - (iv) replace tap washers, parts and fittings if they become broken or do not work properly; and
 - (v) damaged, broken or blocked plumbing on the Premises;
 - (c) Council will maintain the grounds, lawns and gardens which comprise part of the Premises, and keep them tidy;
 - (d) keep all areas designated or intended for the parking or movement of vehicles, including any installations or infrastructure on those areas, cleaned, maintained and in good repair;
 - (e) not without the written consent of the Council destroy, damage or remove any tree or shrub on the Premises;
 - (f) keep the parts of the Premises and the Council Property mentioned in subclause (2) in good repair and working order (including by replacing any Council Property if necessary to achieve that object); and

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- (g) regularly clean and service any grease traps in or on the Premises.
 - (h) If the premises are air conditioned, the Permittee shall keep the air-conditioning equipment in a state of good repair, order and preservation. The Permittee shall pay the cost associated with such maintenance and servicing provided that the Permittee shall not be required to undertake work of a capital nature.
- (2) The parts of the Premises and the Council Property to which paragraph (1)(f) apply are:
- (a) lamp shades;
 - (b) fabric located on walls, ceilings or floor surfaces of buildings;
 - (c) windows and glass;
- (3) The Permittee's obligation under paragraph (1)(f) does not extend to damage caused by:
- (a) reasonable wear and tear; or
 - (b) Insured Risks - unless the Permittee caused or contributed to the damage so that the Council is either unable to make an insurance claim or to recover the full amount that would otherwise have been paid out by the insurance company to the Council, and unless subclause (4) says the obligation extends to the damage.
- (4) The Permittee's obligation under paragraph (1)(f) does, however, extend to damage caused by a risk for which the Permittee is required to hold insurance under the Trustee Permit (regardless of whether the Permittee actually holds insurance against the risk or can recover on any insurance and regardless of whether the risk also happens to be an Insured Risk).
- (5) The Permittee is expressly required to do structural work that is necessary for the Permittee to fulfil its obligations under this clause (but subject to clause 5.3).
- (6) The Permittee must ensure that any Council Property:
- (a) is not removed from the Premises (other than by the Council or someone authorised by the Council); and
 - (b) is not used for any purpose for which it was not intended or made.
- (7) The Permittee acknowledges that the Council may remove Council Property from the Premises from time to time and install or provide new or other Council Property

5.3 Structural work

- (1) The Permittee must (but otherwise is not obliged) to do structural work unless that work is needed because of:
- (a) the Permittee's act, neglect or default;
 - (b) the Permittee's particular use of the Premises;
 - (c) the number, sex or characteristics of the Permittee's employees, contractors, directors, officers, managers or members;
 - (d) an express requirement in this Trustee Permit to do structural work; or
 - (e) a requirement reasonably imposed by the Council to do the work in order to eliminate or reduce any risk or potential for danger to:
 - (i) the Premises;
 - (ii) people on or who may enter or use the Premises;
 - (iii) the Council Property; or
 - (iv) any neighbouring premises or people on or who may enter or use any neighbouring premises.
 - (f) The Permittee must obtain prior written consent from Council (subject to clause 10.7).

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- (2) To remove any doubt, the Permittee is also required to do work that is not of a structural nature if the work is needed for any of the above reasons.
- (3) The Permittee must not:
 - (a) make any structural modification to the Premises (whether or not the Permittee is obligated to do the work under subclause (1));
 - (b) install any electrical wiring, equipment or appliance to provide water, gas, lighting, air-conditioning, heating, cooling or ventilating to the Premises;
 - (c) install any partitions; or
 - (d) carry out any other works to the Premises (other than minor repairs and maintenance), without the Council's approval.
- (4) The Permittee must not construct any structural improvements on the Trust Land.

5.4 Carrying out works

The Permittee must ensure that the work it does is done:

- (1) in a proper and workmanlike manner;
- (2) by contractors approved by the Council (which must not unreasonably withhold its approval);
- (3) without causing unreasonable disturbance to neighbouring property owners; and
- (4) in accordance with:
 - (a) any conditions imposed by the Council (including about what parts of the works are to remain or be removed and what is to be reinstated and to what condition when the Permittee vacates the Premises);
 - (b) any plans, specifications or schedule of finishes approved by the Council;
 - (c) all laws and the requirements of all authorities; and
 - (d) the Council's other reasonable requirements and directions.

5.5 Notice of repair

- (1) The Council may serve the Permittee with a written notice requiring the Permittee to repair, within a reasonable time, a defect which it is the Permittee's responsibility to repair under the Trustee Permit.
- (2) If the Permittee does not carry out those repairs within a reasonable time, the Council may carry out those repairs, at the Permittee's expense, after giving the Permittee advance notice.

5.6 Fencing

The Permittee must not, without the prior written consent of the Council, fence the Premises.

5.7 Town planning applications

The Permittee will pay all fees and costs, including Council fees, associated with any approval, including any Council approval, required for the use of the Premises under this Trustee Permit.

5.8 Permittee's notification of required maintenance

The Permittee must advise the Council of any repair or maintenance work required on the Premises which is not the responsibility of the Permittee under this Trustee Permit as soon as the Permittee becomes aware that the work is required.

5.9 Permittee's obligations at end of term

- (1) The Permittee must on or before the last day of the term of the Trustee Permit:

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- (a) give the Premises back to the Council in good repair and working order, except for reasonable wear and tear and having regard to their condition at the commencement of the Trustee Permit, and clean and free from rubbish;
 - (b) give all Council Property back to the Council in good repair and working order, except for reasonable wear and tear and having regard to their condition at the commencement of the Trustee Permit or the later time when the Council provided the Council Property;
 - (c) carry out any necessary repairs to the reasonable satisfaction of the Council;
 - (d) remove all plant, equipment and goods belonging to anyone other than the Council or the Permittee;
 - (e) remove all of the Permittee Property which has not in any way been affixed to the Premises;
 - (f) remove all signs that have been installed by the Permittee (unless the Council notifies the Permittee to leave them); and
 - (g) remove all those items of the Permittee Property affixed to the Premises which the Council has notified to the Permittee that it requires to be removed from the Premises.
- (2) Any of the Permittee Property which is affixed to the Premises becomes the property of the Council when it is affixed to the Premises. The Permittee may not remove it unless the Council gives the Permittee a notice to remove it under paragraph (1)(g).
- (3) If the Permittee does not remove any of the Permittee Property in accordance with this clause, then the Council may treat it as abandoned and the Council may, at the Permittee's expense, remove, store, appropriate and dispose of it as the Council sees fit.
- (4) The Permittee is not required by this clause to do work which is the responsibility of the Council under this Trustee Permit.
- (5) If the Trustee Permit is cancelled:
- (a) despite anything else in this clause, the Permittee is not authorised to remove the Permittee's improvements on the Trust Land except as provided by section 66 of the Act; and
 - (b) if the Council or the Minister allows the Permittee to remove the Permittee's improvements on the Trust Land, under section 66 of the Act, the Permittee must remove those improvements and repair any damage caused to the Premises by the removal to the reasonable satisfaction of the Council.

5.10 Council may inspect

Council may at all reasonable times (and at any time in case of emergency) enter upon the Premises and any improvements and view the state of repair thereof and make such reasonable investigations as Council may deem necessary for the purpose of ascertaining whether or not there has been any breach of the covenants and conditions contained or implied in this Trust Permit

6 Management obligations

6.1 General management obligations

- (1) The Permittee must manage the Premises so as to provide for:
 - (a) proper maintenance of the facilities on the Premises;
- (2) The Permittee must provide for:
 - (a) the efficient and proper management of the Premises;
 - (b) the operation of the Premises as a high quality and attractive venue for its intended purposes;
 - (c) the safety and security of people working in, using or visiting the Premises and their property; and

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- (d) the fulfilment of the Permittee's obligations under this Trustee Permit by implementing, resourcing and utilising management information systems suitable for enabling the Permittee to efficiently comply with its obligations under this Trustee Permit according to contemporary management standards.
- (3) The Permittee must comply with the reasonable and lawful directions that the Council gives the Permittee from time to time in relation to the efficiency, operation or general management of the Premises.
- (4) The Permittee must ensure that the Premises are marketed and promoted in accordance with the Permittee's obligations under this Trustee Permit and any relevant policies adopted by the Council and notified to the Permittee.
- (5) The Permittee must:
 - (a) prepare and implement programs for all activities and services provided at or from the Premises from time to time; and
 - (b) ensure that those activities and services are provided in an orderly, proper and safe manner.
- (6) The Permittee must:
 - (a) provide for and see to the recruitment, training, supervision and employment of a sufficient number of staff working at the Premises so as to enable the Permittee to fulfil its obligations under this Trustee Permit; and
 - (b) properly, professionally and adequately supervise those staff.
- (7) This clause is not to be taken to limit or qualify another obligation of the Permittee under this Trustee Permit.

6.2 Specific management obligations

The Permittee must:

- (1) ensure that all staff employed or working at the Premises:
 - (a) wear uniforms;
 - (b) are neat and clean in appearance;
 - (c) are courteous to the public; and
 - (d) are drug-free in a state of strict sobriety at all times;
- (2) manage any incidental services provided at the Premises, such as kiosks and shops (but this does not authorise the Permittee to give anyone else the right to use the Premises or to itself do anything outside the scope of the Permitted Use or which is otherwise in breach of this Trustee Permit);
- (3) promote and work towards energy efficiency in the use of Services (particularly water, heating and electricity);
- (4) get the Council's approval before undertaking any sponsorship arrangement with any person for the Premises or any event carried on at the Premises;
- (5) take all reasonable precautions to minimise water wastage and comply with all directions given by the Council regarding water conservation;
- (6) regularly inspect and maintain surveillance of the Premises and Council Property; and
- (7) as soon as practical after opening the Premises on any day, perform a physical security inspection of the Premises.

6.3 Operating hours

- (1) The Permittee must operate the Permitted Use from the Premises; during the Minimum Operating Hours.
- (2) The Permittee must give the Council at least 5 business days' advance notice if the Permittee intends to operate the Permitted Use from the Premises or have the Premises open on a public holiday under the *Holidays Act 1983*.

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- (3) Nothing in the Trustee Permit requires or authorises the Permittee to operate the Permitted Use from the Premises or have the Premises open at any time when it is not lawful to do so.

6.4 Branding and publicity

- (1) The Permittee must not install, paint, write or put a Sign in or on the Premises or Building unless the Permittee has the Council's consent or the Sign::
- (a) is entirely inside the Premises; and
 - (b) is in connection with a Permitted Use; and
 - (c) complies with any applicable Law; and
 - (d) is not affixed or attached to the Premises or any Facility.
- (2) The Permittee:
- (a) must not make any statement to any media either on behalf of the Council or in relation to the management and operation of the Premises;
 - (b) must immediately refer all enquiries from the media to the Council; and
 - (c) must notify the Council immediately if there is an event, occurrence or incident at or associated with the Premises which receives or is likely to receive media attention of any kind.
- (3) The Permittee must comply with all policies determined by the Council from time to time with respect to third party agreements, including those relating to hosting events.

6.5 Council's cyclic asset maintenance and renewal

- (1) The Council may from time to time:
- (a) implement a cyclic asset maintenance and renewal program in relation to the Premises and the Council Property; and
 - (b) notify the Permittee of the program.
- (2) The Council does not have an obligation to the Permittee to have or to follow the program.
- (3) The Permittee must schedule activities and events at the Premises affected by:
- (a) the Council's cyclic asset maintenance and renewal program; or
 - (b) a notice by the Council to the Permittee of its intention to enter the Premises in connection with the program, so as to ensure that those activities and events do not conflict with, disrupt or impede the Council's entry to the Premises and carrying out of any work by or for the Council.

7 Reporting and review

7.1 KPIs and quarterly reports

- (1) The Council may from time to time notify the Permittee of:
- (a) key performance indicators (**KPIs**) against which the Council proposes to assess the standard and quality of performance by the Permittee in carrying out its obligations under this Trustee Permit; and
 - (b) the quantitative data or qualitative criteria to which the Council proposes to have regard in making that assessment.
- (2) Unless and until the Council notifies the Permittee of new ones, the KPIs are the Permittee's obligations under subclause 6.1(1).
- (3) The Permittee must, within 10 business days after the end of the Quarter, give the Council a report that:

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- (a) assesses the Permittee's performance of its functions and obligations under this Trustee Permit during the preceding Quarter, with particular reference to the KPIs prevailing during that Quarter;
 - (b) gives attendance figures for the Premises for each month during the Quarter; and
 - (c) contains other information or content that the Council decides and notifies to the Permittee from time to time.
- (4) The Council may, after the end of a Quarter, conduct its own assessment of the Permittee's performance of its functions and obligations under this Trustee Permit during the preceding Quarter, with particular reference to the KPIs prevailing during that Quarter.
- (5) In connection with that assessment, the Council may require the Permittee to:
 - (a) attend meetings, or have specified employees or officers of the Permittee attend meetings, with representatives of the Council;
 - (b) give information to the Council; and
 - (c) do other things the Council reasonably requires,
 - (d) and the Permittee must comply with those requirements.
- (6) The Council may, after it has either or both:
 - (a) been given a report by the Permittee on the Permittee's performance of its functions and obligations under this Trustee Permit; and
 - (b) conducted its own assessment of the Permittee's performance,
 - (c) give the Permittee a report or a notice that specifies actions, processes, outcomes or objectives that the Council requires the Permittee to do, implement or achieve in the management of the Premises, and the Permittee must comply with the report or notice.

7.2 Reporting of damage etc.

- (1) The Permittee must immediately report to the Council if the Permittee knows or should reasonably know of any:
 - (a) defect;
 - (b) want of repair; or
 - (c) facts or circumstances presenting a potential danger to any person or property,
 - (d) in or in relation to the Premises or Council Property.
- (2) The report must set out:
 - (a) the Permittee's intended actions for rectifying the defect, want of repair or facts or circumstances presenting the potential danger (if rectification is the Permittee's responsibility under this Trustee Permit); and
 - (b) the Permittee's recommendations for rectifying the defect, want of repair or facts or circumstances presenting the potential danger (if rectification is not the Permittee's responsibility under this Trustee Permit).

7.3 Reporting of incidents

- (1) The Permittee must promptly (and in any event within 1 week) report to the Council if the Permittee knows or should reasonably be aware that an incident mentioned in subclause (2) has occurred at or in relation to the Premises. The report must contain:
 - (a) complete details of the incident;
 - (b) the investigations conducted by the Permittee into the incident;

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- (c) the results of those investigations; and
 - (d) the Permittee's strategies and recommendations to prevent future occurrences of the incident or of incidents of a similar kind.
- (2) The incidents to which this clause applies are:
- (a) the occurrence of environmental harm (as defined in the *Environmental Protection Act 1994*) to the Trust Land or to any other land as a result of anything done or happening on the Premises;
 - (b) incidents of major or significant property damage occurring to or at the Premises;
 - (c) incidents of major or significant injury to any person occurring at the Premises;
 - (d) the death of any person at the Premises;
 - (e) workplace incidents as defined in the *Workplace Health and Safety Act 1995*; and
 - (f) occurrences or events that disrupt normal procedures or cause a crisis.

7.4 Reporting of security breaches

- (1) The Permittee must promptly (and in any event within 1 business day) report to the Council if the Permittee knows or should reasonably be aware that a security incident or breach has occurred at the Premises.
- (2) The Permittee must:
 - (a) respond in an appropriate, effective and efficient manner to any security incident or breach that the Permittee has, or was required to, report to the Council under subclause (1); and
 - (b) give the Council further reports as the Permittee formulates and implements that response or whenever the Council requires.

7.5 Reports generally

- (1) The Permittee must ensure that each report the Permittee is required to give the Council under this Trustee Permit is:
 - (a) in sufficient detail to comply with any reasonable requirements of the Council;
 - (b) in any form; and
 - (c) given in the medium and in the way,
 - (d) that the Council decides and notifies to the Permittee from time to time.
- (2) The Permittee:
 - (a) warrants and represents to the Council that each of those reports will be accurate, up-to-date, not incomplete in any material particular and not misleading; and
 - (b) is taken to repeat that warranty and representation every time the Permittee gives the Council one of those reports.

8 Insurance

8.1 Public liability insurance

- (1) The Permittee must effect a public liability insurance policy with an insurer authorised under the *Insurance Act 1973* or, in any other case, to the satisfaction of the Minister, naming the Permittee as the insured covering legal liability for any loss of or damage to any property and for the injury (including death) to any person arising out of anything done or omitted on or about the Premises or any improvements thereon and against all claims, demands, proceedings, costs, charges and expenses whatsoever in respect thereof. Such policy must:

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- (a) be for an amount of not less than \$20,000,000 in respect of all claims arising out of a single event or such higher amounts as the Minister may reasonably require;
 - (b) be effected on a 'claims occurring' basis so that any claim made by the Permittee under the policy after the expiration of the period of policy cover but relating to an event occurring during the currency of the policy will be covered by the policy subject to the claim meeting the policy's other terms and conditions;
 - (c) be effected on such other reasonable terms and conditions as may be required by the Minister; and
 - (d) be maintained at all times during the currency of the Trustee Permit.
- (2) The Permittee must, as soon as practicable, inform the Minister and the Council, in writing, of the occurrence of any event that the Permittee considers is likely to give rise to a claim under the policy of insurance effected and must ensure that the Minister and the Council are kept fully informed of subsequent actions and developments concerning the claim.
- (3) The Permittee must renew such policy, at the Permittee's expense, each year during the currency of this Trustee Permit and forward a certificate of currency to the Council within 14 days of the commencement of each respective renewal period.
- (4) Upon receipt of a notice of cancellation, the Permittee must immediately effect another public liability policy in accordance with the provisions of this clause.
- (5) Subclause (1) will be satisfied if the Permittee is the State of Queensland or a statutory authority eligible for cover under the Queensland Government Insurance Fund and is insured and continues to be insured by the Queensland Government Insurance Fund.

8.2 Other insurance

- (1) The Permittee must:
- (a) have other insurances which are required by law; and
 - (b) insure against any other risk reasonably required by the Council, at all times during the term of the Trustee Permit.
- (2) The Permittee must:
- (a) effect each policy with an insurer of good repute and apparently sound financial backing and authorised under the *Insurance Act 1973* to carry on insurance business;
 - (b) take out and maintain the policy in the name of the Minister, the Council and the Permittee for their respective liabilities;
 - (c) ensure that the cover under the policy includes loss or damage to property and death of or injury to persons; and
 - (d) give the Council a certificate of currency issued by the insurer before the term of the Trustee Permit starts, before each renewal date of the policy, and at any other time which the Council notifies to the Permittee in writing.
- (3) The Permittee is not required by this clause to insure any building on the Trust Land or the Council Property.

8.3 Additional premiums

The Permittee must pay any extra premiums incurred by the Council for any extra risk caused by the use of the Premises by the Permittee.

8.4 Prejudice of insurance

The Permittee must not do nor omit to do anything which may:

- (1) increase the insurance premium; or

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- (2) allow the insurer to refuse a claim, of or under any insurance policy taken out by the Council in relation to the Premises.

9 Release, indemnity and liability

9.1 Exemption from liability

- (1) The Permittee occupies and uses the Premises at its own risk (except for personal injuries to the extent that the Council, its servants or contractors causes them).
- (2) Neither the Council nor the Minister is liable to the Permittee for damage to the Permittee Property or for loss of profits, no matter how it is caused, including that caused by:
 - (a) any defect in the Premises;
 - (b) any defect in the operation of facilities or Services to the Premises; and
 - (c) water, fire or other like cause.

9.2 Indemnity

- (1) The Permittee indemnifies the Council and the Minister against any action, demand, proceeding, loss, expense or other liability arising during or after the term of the Trustee Permit from:
 - (a) the Permittee not complying with the obligations imposed by the Trustee Permit;
 - (b) the Permittee's use of the facilities or services to the Premises;
 - (c) the escape of any substance from the Premises or a place on the Premises other than through something done by the Council; or
 - (d) the Permittee occupying and using the Premises.
- (2) This indemnity:
 - (a) extends to any action, demand, proceeding, loss, expense or other liability made or brought against the Council or the Minister by the Permittee or by any other person or incurred by the Council or the Minister to or in favour of the Permittee or any other person;
 - (b) extends to penalties and legal and other costs incurred by the Council or the Minister;
 - (c) may be enforced by the Council or the Minister at or prior to the finalisation or establishment of the action, demand, proceeding, loss, expense or other liability to which it relates; and
 - (d) does not apply to an action, demand, proceeding, loss, expense or other liability for personal injuries to the extent that it is caused by the Council or the Minister and their respective servants and contractors.
- (3) The Council's and the Minister's exemption from liability and indemnity extend to their respective servants and contractors.

9.3 Council has no responsibility to supervise

The Permittee acknowledges and agrees that the Council:

- (1) is not under this Trustee Permit subject to;
- (2) does not assume; and
- (3) will not be taken as a result of any act or omission to be subject to or to have assumed, any obligation to supervise or monitor the Permittee in its use of the Premises or in its compliance or otherwise with its obligations under this Trustee Permit.

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9.4 Obligations not exhaustive

The Permittee acknowledges and agrees that:

- (1) the Permittee's obligations under this Trustee Permit are not, and are not intended to be, an exhaustive code of the risk management or other measures that the Permittee must employ in order to fulfil its duty of care or other legal obligations; and
- (2) the Permittee is solely responsible for:
 - (a) determining or finding out whether it must employ other measures, in addition to fulfilling its obligations under this Trustee Permit, in order to comply with its duty of care and its other legal obligations; and
 - (b) employing and effectively carrying out those other measures.

9.5 Permittee indemnifies Council

The Permittee specifically agrees that:

- (1) the indemnity contained in clause 9.2 extends to any action, demand, proceeding, loss, expense or other liability that could have been brought or made against or incurred by the Council but for clause 9.3 or 9.4; and
- (2) despite anything else in clause 9.2, only the Permittee will be taken to have caused an action, demand, proceeding, loss, expense or other liability even if:
 - (a) the Council or the Manager had but did not exercise the power, under this Trustee Permit or otherwise, to direct or require the Permittee to do something that would or could have prevented the action, demand, proceeding, loss, expense or other liability; or
 - (b) the Council or the Manager had and did exercise such a power, except to the extent that the action, demand, proceeding, loss, expense or other liability is a direct and inevitable consequence of the Permittee doing something it was directed or required to do under that power (as distinct from merely being a consequence of the way the thing was done).

9.6 Council released on change of trustee

If a person other than the Council becomes the trustee of the Trust Land, then the Council is released from all obligations under this Trustee Permit after the other person becomes the trustee.

10 Other matters

10.1 Nature of Trustee Permit

- (1) The Trustee Permit does not give the Permittee:
 - (a) any estate or interest in the Trust Land; or
 - (b) exclusive possession of the Premises.
- (2) The Permittee cannot exclude the Council, or the Council's invitees or anyone else the Council authorises to use the Premises for the community purpose for which the Trust Land was dedicated or granted in trust or a purpose consistent with that community purpose, from the Premises.
- (3) The Permittee cannot exclude the Council or the Council's invitees from entering the Premises and doing on the Premises anything that the Council is authorised to do (or to authorise someone else to do) as trustee of the Trust Land, even if that interferes with the Permittee's ability to exercise its rights under the Trustee Permit. The Permittee is not entitled to claim compensation from the Council because of any such interference, but the Council will do what it reasonably can to give the Permittee reasonable advance notice if the Council proposes to enter the Premises, or authorise someone else to enter the Premises, and do anything on the Trust Land that the Council knows will materially interfere with the Permittee's ability to exercise its rights under the Trustee Permit.

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- (4) It is a condition of the Trustee Permit that the Permittee holds the Trustee Permit so that the Trust Land may be used for the community purpose for which it was dedicated or granted in trust without undue interruption or obstruction.

10.2 No dealings with Trustee Permit

- (1) The Permittee cannot transfer, sublet or mortgage:
- (a) the Permittee's right to use the Trust Land; or
 - (b) the Trustee Permit.
- (2) The Permittee:
- (a) must act personally in fulfilling its obligations under this Trustee Permit to manage and operate the Premises;
 - (b) does not breach the obligation to act personally if it acts through its officers or employees; and
 - (c) does breach the obligation to act personally if it engages an independent contractor to fulfil any of the Permittee's obligations under this Trustee Permit without the Council's approval.

10.3 Notice of cancellation of Trustee Permit

The Minister or the Council must give the Permittee 28 days' notice of the Minister's or the Council's intention to cancel this Trustee Permit.

10.4 Permittee as trustee

If the Permittee has entered into or holds the Trustee Permit in the capacity of trustee of any trust (the **Trust**), whether or not the Council has notice of the Trust, the Permittee:

- (1) accepts the Trustee Permit both as trustee of the Trust or as agent and in its personal capacity;
- (2) acknowledges that it is personally liable for the performance and observance of the Permittee's obligations;
- (3) covenants with the Council that if there is any unremedied breach, the Permittee will take those steps and proceedings necessary to ensure that the assets of the Trust are made available for the purpose of rectifying that breach;
- (4) covenants with the Council that the Permittee has full rights to claim indemnity against the assets of the Trust for the Permittee's liabilities under this Trustee Permit and that those rights have not been, and will not be, changed or lost;
- (5) covenants with the Council that the Permittee will not commit a breach of trust;
- (6) upon demand by the Council, must assign to the Council all rights of indemnity which the Permittee may have against the assets of the Trust; and
- (7) warrants that the Permittee has power and authority under the Trust to enter into the Trustee Permit and that it enters into the Trustee Permit in the due administration of the Trust.

10.5 Guarantee and indemnity

- (1) If there is a Guarantor, this Trustee Permit is granted conditionally on each Guarantor executing and entering into the guarantee and indemnity in this Trustee Permit, by executing this Trustee Permit.
- (2) If that condition is not satisfied, the Council may rescind the Trustee Permit.

10.6 Notices

- (1) A notice required or authorised to be given by the Permittee to Council, or by the Council to the Permittee, under or in relation to the Trustee Permit must be:
 - (a) in writing; and

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- (b) in the case of a notice directed to the Permittee:
 - (i) left at or posted to the address of the Premises;
 - (ii) left at or posted to an address for service under subclause (2); or
 - (iii) served under section 109X of the *Corporations Act 2001(CTH)* if the Permittee is a company; and
 - (c) in the case of a notice directed to the Council, left at or posted to the address of the Council's public office.
- (2) Any party may change its address for service to another address in Queensland, or may give an additional address for service in Queensland, by giving a written notice to the other party.
 - (3) A notice by the Council may be executed by the Council or the Manager. A notice by either party may be executed by that party's solicitor (including, in the case of the Council, its City Solicitor).
 - (4) A notice or approval is taken to be given:
 - (a) if sent by post, on the second business day after posting; and
 - (b) if sent by facsimile by 4:00pm on a business day, on the same business day that it is sent, but otherwise on the next business day, unless the sender is aware that the transmission is impaired.

10.7 Consent or approval of Council

- (1) Any consent or approval of the Council has no effect unless it is in writing and executed by the Council by:
 - (a) its chief executive officer; or
 - (b) a delegate of the Council or of its chief executive officer who is acting within the scope of the delegate's authority.
- (2) If the Permittee wants the Council's consent or approval under this Trustee Permit, the Permittee must:
 - (a) apply in writing to the Council for the consent or approval;
 - (b) supply any additional information or documents that the Council asks for; and
 - (c) pay all costs and expenses incurred by the Council (including legal fees and costs on a full indemnity basis and any reasonable administrative fee imposed by the Council) in relation to the Council's consideration of the Permittee's application, whether or not the Council grants the consent or approval.
- (3) Unless the Trustee Permit says otherwise, the Council may in its discretion grant or refuse to grant the consent or approval or grant it subject to conditions.
- (4) The Permittee must comply with any conditions subject to which the Council grants a consent or approval. If any such condition is not complied with or satisfied, the consent or approval is taken never to have been granted.

10.8 Business days

- (1) Anything which is to be done on Saturday or a Sunday or a public holiday in Queensland may be done on the next day which is not a Saturday, Sunday or public holiday.
- (2) A reference to a business day in this Trustee Permit is to a day that is not a Saturday, Sunday or public holiday in Ipswich.

10.9 Power of attorney

- (1) The Permittee appoints the Council, the chief executive officer from time to time of the Council and the Manager jointly and severally to be its attorneys.

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- (2) The attorneys may at any time after the termination of this Trustee Permit or after the Permittee has breached this Trustee Permit act individually or together in any combination and do any one or more of the following:
- (a) transfer or surrender any licence which relates to the Permittee's business and is attached to the Premises;
 - (b) execute the documents needed to effect those dealings;
 - (c) register those dealings; and
 - (d) do anything the attorney or attorneys reasonably consider necessary or appropriate to remedy any breach by the Permittee of this Trustee Permit or to fulfil an obligation:
 - (i) of the Permittee under this Trustee Permit,
 - (ii) that the Permittee would have had under this Trustee Permit but for the termination of this Trustee Permit because of the Permittee's default or repudiation, (regardless of whether the breach or obligation arises before or after the power of attorney becomes exercisable).
- (3) The Permittee must pay the attorneys the amount of any costs, expenses or other liabilities which the attorneys incur in exercising the powers in this clause.
- (4) The Permittee agrees (for the benefit of the attorneys and of the Council) that:
- (a) a statutory declaration by any of the attorneys that the power has become exercisable will be prima facie evidence of that fact;
 - (b) a statutory declaration by, a warranty made by or contractual term undertaken by any of the attorneys that a thing done or to be done, or an obligation fulfilled or to be fulfilled, by the attorney or attorneys is within the scope of the power will be prima facie evidence of that fact;
 - (c) if an attorney requests the Permittee to do so, the Permittee will immediately ratify anything lawfully done by any of the attorneys under the power; and
 - (d) as long as the attorney acts lawfully, the Permittee will indemnify each attorney and the Council and will keep them indemnified against any loss, claim, proceeding or liability (whether at the hands of the Permittee or of someone else) incurred or arising in respect of the exercise or purported exercise of the power.
- (5) The Permittee agrees (for the benefit of any person dealing or transacting with any of the attorneys acting or purportedly acting under the power of attorney) that:
- (a) a statutory declaration by any of the attorneys that the power has become exercisable will be conclusive evidence of that fact;
 - (b) a statutory declaration by, a warranty made by or contractual term undertaken by any of the attorneys that a thing done or to be done, or an obligation fulfilled or to be fulfilled, by the attorney or attorneys is within the scope of the power will be conclusive evidence of that fact; and
 - (c) any person dealing or transacting with any of the attorneys acting or purportedly acting under the power of attorney is entitled to accept without making enquiry that everything done or purportedly done by the attorney or attorneys acting or purportedly acting under the power is done lawfully, properly and within the scope of the power.
- (6) The power of attorney in this clause is granted by way of security for the performance of the Permittee's obligations under this Trustee Permit and is irrevocable.

10.10 Governing law

- (1) The laws of Queensland govern this Trustee Permit.
- (2) The courts of Queensland at Ipswich and Brisbane, and the courts of appeal from those courts, have non-exclusive jurisdiction within their jurisdictional limits (in relation to monetary amounts and remedy sought but

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without restriction in relation to geographical jurisdiction) to hear and determine disputes under or about this agreement.

10.11 Notice before Council liable

The Council is not in default of a remediable breach under this Trustee Permit unless:

- (1) the Permittee first gives notice to the Council of the breach; and
- (2) the Council fails to remedy the breach within a reasonable time after receiving the notice, despite anything in the Trustee Permit to the contrary.

10.12 Council's powers

The powers given to the Council in the Trustee Permit may be exercised by its agents and with any necessary machinery.

10.13 Permittee's responsibility

- (1) Except where inconsistent with the context, references in this Trustee Permit to:
 - (a) the Permittee include the Permittee's members, invitees, licensees, concessionaires, employees, agents, contractors and any other person for whose acts or omissions the Permittee is responsible in law; and
 - (b) the acts or omissions of the Permittee include the acts or omissions of any of those people.
- (2) For the purposes of the Trustee Permit, an act or omission of a person referred to in paragraph (1)(a):
 - (a) is taken to be the act or omission of the Permittee; and
 - (b) has the same legal consequences as if the Permittee had personally done the act or made the omission.
- (3) Where the Permittee is prohibited from doing anything, the Permittee must not cause or allow any other person to do it either.

10.14 Money payable on demand

All money payable by the Permittee to the Council is, unless otherwise specified, payable on demand.

10.15 Time essential

Time is of the essence for all the Permittee's obligations under the Trustee Permit.

10.16 Waiver

- (1) In the absence of an express written waiver given by notice to the Permittee, the Council is not to be taken to have waived any of the Permittee's obligations or any breach by the Permittee.
- (2) Any waiver of a breach does not extend to any other prior or subsequent breaches of the same kind unless it expressly says so.
- (3) A written waiver by the Council must be in writing and executed for the Council by:
 - (a) its chief executive officer; or
 - (b) a delegate of the Council or of its chief executive officer who is acting within the scope of the delegate's authority, and is not effective otherwise.

10.17 Council's powers, rights and remedies

- (1) The Council's powers, rights and remedies under the Trustee Permit are cumulative and not alternative. The Council may exercise and enforce its powers, rights and remedies in any order it chooses.

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- (2) The Council may authorise any other person to exercise any of its rights or powers under this Trustee Permit.

10.18 Council's statutory powers preserved

- (1) No provision of this Trustee Permit is to be taken to limit, restrict, qualify or remove any right or power of the Council under any law (including its local laws from time to time).
- (2) Each of those rights and powers is independent of, and exercisable without reference to, the rights and powers given to or reserved by the Council under this Trustee Permit (and vice versa).

10.19 References to Manager

- (1) Despite any other provision of the Trustee Permit, a reference to the Manager is to be read as including a reference to the Council.
- (2) Any power of the Manager under the Trustee Permit may be exercised by the Council rather than by the Manager.
- (3) Any provision of the Trustee Permit which, by its terms, would appear to impose on the Permittee an obligation owed to the Manager must nevertheless be read as imposing on the Permittee an obligation owed to the Council.
- (4) If a provision of the Trustee Permit provides or contemplates that the Council might exercise a power or do something else, the power or thing may be exercised or done:
 - (a) by the Council personally; or
 - (b) by a person to whom the relevant power or thing has been delegated according to law (including, if applicable, the Manager).

10.20 Invalid provisions

- (1) If any provision or part of a provision of this Trustee Permit is void, avoided, invalid or unenforceable, that provision or part is to be ignored and the rest of this Trustee Permit remains effective, with any changes or modifications necessary so the Trustee Permit continues to have its fullest possible effect.
- (2) This is not intended to restrict the ability of a court to read down or confine the operation of the provision or part to stop it from being void, avoided, invalid or unenforceable.

10.21 Counterparts

- (1) This Trustee Permit may be entered into in any number of counterparts.
- (2) As long as each of the counterparts would have the same legal effect if all parties to this Trustee Permit had executed it, then the counterparts are taken to make up the one instrument.

10.22 Holding Over

- (1) The Tenant may hold over, but only with the prior approval in writing of Council subject to a Trustee Permit renewal, continue to occupy the Premises beyond the expiration of the Trustee Permit and shall do so under this Trustee Permit on and subject to the covenants, terms, conditions and provisions hereof as a monthly tenant only at a monthly rental payable monthly in advance. The tenancy so created shall be determinable by either Council or Tenant giving not less than one (1) months' notice in writing to the other expiring on any day of the month.

11 Guarantee and indemnity

11.1 Definitions

These definitions apply to terms used in this section, except to the extent that the context indicates a contrary intention. These definitions apply in addition to definitions elsewhere in the Trustee Permit.

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Term	Definition
Council's Rights	means the rights of the Council: (a) expressed or implied in the Trustee Permit or the Guarantee; (b) arising under or because of the Trustee Permit or the Guarantee; or (c) arising under any law, at law or in equity.
Guarantee	means, depending on the context: (a) this section (comprising clauses 11.1 to 11.8); or (b) the legal relationship between the Council and the Guarantor.
Guaranteed Obligation	means an obligation of the Permittee: (a) under the Trustee Permit; (b) to pay or repay any part of the Secured Amount; (c) to pay or repay any money which would be payable under, or as damages for breach of, a provision of the Trustee Permit if the provision was not void, avoided, illegal or unenforceable; or (d) to pay money as interest, Costs or otherwise, other than as specified in paragraphs (a), (b) or (c) in connection with or because of an amount falling within one or more of those paragraphs, and includes, for example, obligations to indemnify.
Secured Amount	at a particular time, means all amounts of money outstanding or contingently payable by the Permittee to the Council under the Trustee Permit or in respect of a breach of the Trustee Permit (even if they have not become payable), including: (a) money payable under an obligation to indemnify; and (b) amounts that have not been quantified.

11.2 Background

- (1) The Guarantor has requested the Council to issue the Trustee Permit.
- (2) By executing this guarantee the Guarantor:
 - (a) confirms that request; and
 - (b) acknowledges that the Council has entered, or will enter, into the Trustee Permit because of that request.
- (3) It does not matter whether the Council enters into the Trustee Permit before or after the execution of the Guarantee by any person comprising the Guarantor.
- (4) The inclusion of this clause must not be taken to limit the effectiveness of the Guarantee as a deed.

11.3 Guarantee

- (1) The Guarantor guarantees to the Council the due and punctual compliance by the Permittee with the Guaranteed Obligations.
- (2) If the Permittee does not duly and punctually comply with a Guaranteed Obligation, the Guarantor must immediately pay to the Council the amount required to make good, or compensate the Council for, the non-compliance.

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11.4 Indemnity

- (1) The Guarantor indemnifies the Council against:
 - (a) any costs, losses, damages or expenses paid or incurred by the Council as a result of, or in connection with, the Permittee's failure to duly and punctually comply with a Guaranteed Obligation;
 - (b) any liability of the Council arising directly or indirectly from the Permittee's failure to duly and punctually comply with a Guaranteed Obligation; and
 - (c) any costs and expenses paid or incurred by the Council in relation to the liability referred to in paragraph (b).
- (2) The Guarantor indemnifies the Council in respect of any Guaranteed Obligation which the Council cannot enforce, or the Permittee cannot comply with:
 - (a) because a provision of the Trustee Permit purporting to give rise to, or relating to, the Guaranteed Obligation is void, avoided, illegal or unenforceable; or
 - (b) for any other reason.
- (3) As a principal debtor, the Guarantor agrees to comply with a Guaranteed Obligation referred to in subclause (2) as if it was set out at length in the Guarantee (with any necessary modifications).

11.5 Guarantor's liability

- (1) In any proceedings in which the liability of the Guarantor to the Council is in issue, and despite any other provision of the Guarantee, the Guarantor:
 - (a) will be treated as a principal debtor and contractor jointly and severally liable with the Permittee to comply with the Guaranteed Obligations; and
 - (b) will not raise any defence based on an express or implicit allegation that the Guarantor's position as against the Council is that of a guarantor or surety.
- (2) The Guarantor's obligations under the Guarantee:
 - (a) will remain in full force and effect until the Guaranteed Obligations have been fully complied with, discharged and satisfied;
 - (b) are absolute and unconditional; and
 - (c) do not depend on demand being made.
- (3) In particular, the Guarantor's obligations under the Guarantee are not affected, reduced, abated, suspended, abrogated or varied by:
 - (a) the variation, termination or enforcement of the Trustee Permit, whether by agreement of the Guarantor, Council and/or Permittee or not;
 - (b) the granting to the Permittee of any time or other indulgence;
 - (c) the granting of any concession or the waiver of any failure by the Permittee to comply with a Guaranteed Obligation;
 - (d) the postponing for any time or from time to time of the exercise of any of the Council's Rights;
 - (e) any variation in the respective obligations and liabilities of the Permittee and Council, whether or not made with the knowledge or consent of the Guarantor;
 - (f) any change in the positions as between each other of the Permittee and Guarantor, whether or not notice of the change is given to the Council;
 - (g) the Permittee being or becoming Insolvent;
 - (h) any negligence, delay or laches on the part of the Council in enforcing the Council's Rights;

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- (i) the taking or release or loss of any security held by the Council in relation to the Guaranteed Obligations; or
- (j) any provision of the Trustee Permit or the Guarantee being or becoming void, avoided, illegal or unenforceable.
- (4) The Guarantor waives all legal, equitable, statutory or other rights as surety which may at any time be inconsistent with any of the provisions of the Guarantee.

11.6 Payments

- (1) The Guarantor must:
 - (a) make all payments to the Council required by the Guarantee by the method (or one of a number of methods) that the Council requires from time to time; and
 - (b) do all things reasonably required by the Council to facilitate payments by that method (or one of those methods), including, for example and if applicable, providing a direct debit authority to the Council or a person nominated by the Council; and
 - (c) make all payments that the Guarantor is required by the Guarantee to make, without demand unless the Guarantee provides or necessarily intends that demand be made first.
- (2) The Guarantor:
 - (a) must not deduct from any payment any amount the Guarantor claims the Council owes, or could in the future owe, the Permittee; and
 - (b) cannot set off any such amount against any payment the Guarantor must make under the Guarantee.
- (3) Payments must be made in Australian currency.
- (4) The Council may appropriate payments in any way it chooses to. It does not have to:
 - (a) pay the earliest debt first; or
 - (b) comply with any requirement made by the Guarantor about the appropriation of a payment.

11.7 Council's Rights

- (1) The Council is not liable for any involuntary losses or irregularities arising because of the exercise, attempted exercise, or non-exercise, of the Council's Rights.
- (2) The Guarantor indemnifies the Council against any liability, cost, loss or expense caused or contributed to by a breach of the Trustee Permit by the Permittee or the exercise, attempted exercise or non-exercise of the Council's Rights. These indemnities are independent, separate and continuing obligations which will survive the termination of the Guarantee.
- (3) The Council may exercise any of the Council's Rights even if the Council:
 - (a) has had the ability or opportunity to exercise it before; and
 - (b) did not then exercise it.
- (4) The Council may exercise any of the Council's Rights despite anything except an express written waiver of the right. No waiver affects the ability of the Council to exercise the same right at a later date.
- (5) At no time is the Council under an obligation to exercise any of the Council's Rights or to exercise them in a particular way.
- (6) The Council's Rights are cumulative and not alternative.
- (7) The Council may exercise any of the Council's Rights in whatever order the Council chooses.

11.8 General

- (1) The Guarantor must do everything reasonably required by the Council to:

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- (a) fully give effect to and perfect the Guarantee; or
 - (b) give the Council the full benefit of the Council's Rights.
- (2) Execution of the Guarantee by a party is intended to constitute delivery of the document by that party.
- (3) The Guarantee is to be governed by the laws of Queensland.
- (4) The courts of Queensland at Ipswich and Brisbane, and the courts of appeal from those courts, have non-exclusive jurisdiction within their jurisdictional limits (in relation to monetary amounts and remedy sought but without restriction in relation to geographical jurisdiction) to hear and determine disputes under or about the Guarantee.
- (5) The obligations of the Guarantor and the Council's Rights:
 - (a) will not merge because of the termination of the Guarantee or Trustee Permit or any other event or thing; and
 - (b) continue in full force and effect despite the termination of the Guarantee or Trustee Permit and any other event or thing.
- (6) A statement in writing signed by the Council or any agent or solicitor of the Council in relation to:
 - (a) the Secured Amount; or
 - (b) any other matter relating to this Guarantee, is conclusive evidence of those matters unless the Guarantor can prove otherwise or the Council withdraws the certificate.
- (7) If any provision of the Guarantee is void, voidable, invalid, unenforceable or illegal in any jurisdiction:
 - (a) the provision is to be read down or, if that is not possible, is taken to be modified or omitted, to the extent necessary to prevent it from being void, voidable, invalid, unenforceable or illegal in that jurisdiction;
 - (b) the provision is to remain in full force and effect in all other jurisdictions; and
 - (c) the remainder of the Guarantee is to remain in full force and effect.
- (8) The Guarantee can only be varied, modified, waived, discharged or changed by a further instrument in writing and signed by the party or parties to be bound by the variation, modification, waiver, discharge or change.
- (9) Time is of the essence for all the Guarantor's obligations under the Guarantee.
- (10) The Council may at any time:
 - (a) assign any of its rights under the Guarantee; and
 - (b) disclose to a potential assignee any information about the Guarantor.
- (11) The Guarantee is fully valid and enforceable regardless of:
 - (a) the order in which the Trustee Permit and the Guarantee are executed or become binding, whether generally or on each party; and
 - (b) the fact that the Council may not execute it.
- (12) The Council's execution of the Trustee Permit counts also as its execution of the Guarantee.
- (13) The Guarantee is a deed, and execution by a party is taken to be delivery of the deed by that party.

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Signing by Guarantor

WARNING TO GUARANTOR

- This is an important document that you should not sign lightly. By signing, you will be giving the Council a guarantee and indemnity.
- There are many circumstances that could give the Council the right to enforce this guarantee and indemnity.
- These circumstances could include fraud or poor management by the Permittee or its employees, imprudent business practices, failure to effect proper insurances, over optimistic income and profit projections or changes in interest rates, the marketplace, commodity prices, the economy or law.
- Some of these circumstances might be beyond your control or even the Permittee's and might not be foreseeable to you now. That makes no difference to the Council's right to enforce this guarantee and indemnity.
- If the Permittee does not meet its obligations for whatever reason, you risk losing your assets, and your right to recoup your losses is restricted.
- **YOU ARE STRONGLY ADVISED TO READ ALL OF THE DOCUMENTS MAKING UP THE GUARANTEE AND INDEMNITY AND THE TRUSTEE PERMIT CAREFULLY AND, BEFORE SIGNING, MAKE ANY INVESTIGATIONS ABOUT THE PERMITTEE AND ANY OTHER GUARANTOR, AND OBTAIN ANY LEGAL OR FINANCIAL ADVICE, THAT YOU CONSIDER NECESSARY TO ENSURE YOU FULLY UNDERSTAND YOUR OBLIGATIONS.**

Executed by the Guarantor on / /:

.....
Signature of witness

.....
Signature of Guarantor

.....
Full name of witness

.....
Full name of Guarantor

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ANNEXURE A

Permit Area

