

ITEM NUMBER: 18.1

CONFIDENTIAL REPORT

SOMERTON SURF LIFE SAVING CLUB RESTAURANT AND FUNCTION CENTRE SUB- LEASE

Pursuant to Section 83(5) of the Local Government Act 1999 the Report attached to this agenda and the accompanying documentation is delivered to the Council Members upon the basis that the Council consider the Report and the documents in confidence under Part 3 of the Act, specifically on the basis that Council will receive, discuss or consider:

- b. Information the disclosure of which could reasonably be expected to confer a commercial advantage on a person with whom the council is conducting, or proposing to conduct, business, or to prejudice the commercial position of the council; and would, on balance, be contrary to the public interest.
- d. commercial information of a confidential nature (not being a trade secret) the disclosure of which could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party; and would, on balance, be contrary to the public interest.

Recommendation – Exclusion of the Public – Section 90(3)(b & d) Order

1. That pursuant to Section 90(2) of the *Local Government Act 1999* Council hereby orders that the public be excluded from attendance at this meeting with the exception of the Chief Executive Officer and Staff in attendance at the meeting in order to consider Report No: 238/23 Somerton SLSC Restaurant and Function Centre Sub-Lease of in confidence.
 2. That in accordance with Section 90(3) of the *Local Government Act 1999* Council is satisfied that it is necessary that the public be excluded to consider the information contained in Report No: 238/23 Somerton SLSC Restaurant and Function Centre Sub-Lease on the following grounds:
 - b. pursuant to section 90(3)(b) of the Act, the information to be received, discussed or considered in relation to this Agenda Item is information the disclosure of which would prejudice the commercial position of the Council.
 - d. pursuant to section 90(3)(d) of the Act, the information to be received, discussed or considered in relation to this Agenda Item is commercial information of a confidential nature (not being a trade secret) the disclosure of which could reasonably be expected to prejudice the commercial position of the person who supplied the information.

In addition, the disclosure of this information would, on balance, be contrary to the public interest. The public interest in public access to the meeting has been balanced against the public interest in the continued non-disclosure of the information. The benefit to the public at large resulting from withholding the information outweighs the benefit to it of disclosure of the information.
 3. The Council is satisfied, the principle that the meeting be conducted in a place open to the public, has been outweighed by the need to keep the information or discussion confidential.
-

Item No: 18.1

Subject: **SOMERTON SURF LIFE SAVING CLUB RESTAURANT AND FUNCTION CENTRE SUB-LEASE**

Date: 25 July 2023

Written By: Manager, Development Services

General Manager: Strategy and Corporate, Ms P Jackson

SUMMARY

The Somerton Surf Lifesaving Club (the Club) has a lease over the Somerton Surf Lifesaving Club building for a term of 21 years expiring on 6 December 2026 (Head Lease). Pursuant to Clause 5 of the Head Lease, the Club is entitled to sub-lease areas within the building to third parties, on the proviso that Council consent to the terms and conditions. Following the granting of planning consent for a change of land use for the first floor of the building, subsequent negotiations led to Council granting consent for the establishment of a sub-lease for a third-party to operate the restaurant and function centre for a limited term of one (1) year, which is due to expire on 27 October 2023. This report seeks a decision from Council on whether to grant a new sub-lease, and if so, on what terms.

RECOMMENDATION

That Council:

1. **approves a sub-lease between the Somerton Surf Lifesaving Club Inc (as Sub-Lessor) and Gambell & Sutton Pty Ltd (as the Sub-Lessee) for a restaurant and function centre for the first floor of the building on the following terms:**
 - **term: three (3) years and forty (40) days from 27 October 2023 until 6 December 2026, being commensurate with the expiry of the Head Lease for the Somerton Surf Life Saving Club facility;**
 - **renewal: option for one renewal only, limited to two years (providing the Head Lease is renewed beyond 6 December 2026)**
 - **sub-lease area: delineated in red on the plan annexed hereto as Attachment 1 being approximately 402m²;**
 - **trading hours established by the City of Holdfast Bay Council Assessment Panel in decision notice 21029363, being:**

Monday - Closed
Tuesday – Closed
Wednesday – 11am to 10pm
Thursday – 11am to 10pm

Friday – 11am to Midnight
Saturday – 11am to Midnight
Sunday – 11am to 10pm
Public Holidays – Relative to day above

- commencing rent payable to the Sub-Lessor: \$75,000 per annum excluding GST to be reviewed annually in accordance with movements in CPI (Adelaide All-Groups) subject to:
 - a) payment of \$22,500 per annum excluding GST by the Club to Council from the date of the sub-lease being executed to be reviewed annually in accordance with movements in CPI (Adelaide All-Groups); and
 - b) an adjustment made to the Head Lease commensurate with the execution of the sub-lease to include the restaurant and function centre use and new Head Lease rent payment to Council.
- 2. authorises the Mayor and Chief Executive Officer to execute and seal any documents required to give effect to this sub-lease.

RETAIN IN CONFIDENCE - Section 91(7) Order

3. Having considered Agenda Item 18.1 Somerton Surf Life Saving Club Restaurant and Function Centre Sub-Lease (Report No: 238/23) in confidence under Section 90(2), 90(3)(b) and 90(3)(d) of the *Local Government Act 1999*, the Council, pursuant to section 91(7) of that Act orders that the report, attachments and minutes be retained in confidence for a period of 24 months with the Chief Executive Officer authorised to release the documents on the expiry of the 24 month confidentiality period.

STRATEGIC PLAN

Wellbeing Objectives 2020-2030 – Integrate community, recreational, and commercial services in multi-purpose spaces through the increase in utilisation rates for Council owned buildings.

COUNCIL POLICY

Sporting and Community Leasing Policy
Commercial Leasing & Licensing Policy

STATUTORY PROVISIONS

Local Government Act 1999
Retail and Commercial Lease Act 1995

BACKGROUND

Pursuant to Council Resolution No. C090822/2699 dated 9 August 2022, the Somerton Surf Lifesaving Club (the Club) sought and was granted approval to enter into a sub-lease arrangement with a third party (Gambell & Sutton Pty Ltd) to manage and operate the Club's upstairs dining and function area, having previously secured planning approval for a change of land use from the City of Holdfast Bay Council Assessment Panel (CAP). The sub-lease was granted for a period of one year to 27 October 2023, with a starting annual rent of \$68,340 per annum excluding GST, 30% of which or \$20,502 per annum excluding GST was to be returned to Council in recognition of its equity in the upstairs facility. A Council workshop was held on 4 July 2023 for a discussion on whether to grant a new sub-lease or not, and if so, under what terms.

REPORT

The Club is seeking to enter into a new sub-lease with its existing third-party commercial partner (being Gambell & Sutton) for exclusive use to operate a restaurant and function centre on the first floor of the Club's facility. Attachment 1 to this report outlines the area on the first floor intended for exclusive commercial use as a restaurant and function centre operated by Gambell & Sutton.

Refer Attachment 1

The current term of the sub-lease expires on 27 October 2023, with no right of renewal. In this regard, Council will need to consider whether to grant a new sub-lease, and if so, under what terms. In accordance with the Council's *Sporting and Community Clubs Leasing Policy*, where facilities are not made available to the community, Council reserves the right to apply occupancy terms and conditions that reflect exclusive use of the premises. Furthermore, the Policy requires that where a Club restricts community access for the purpose of exclusive use, annual rental fees based on a market appraisal of the land will be imposed.

Given that profits from the restaurant and function centre will be retained by Gambell & Sutton, the *Sporting and Community Clubs Leasing Policy* seeks that where the profits gained from a commercial activity are not reinvested into the club facilities or sport, then a rent charged in accordance with the separate *Commercial Leasing & Licensing Policy* may apply. The *Commercial Leasing & Licensing Policy* seeks that rent must reflect a rent that could reasonably be obtained in the open market, determined by an independent valuation. An independent commercial valuation was therefore commissioned and is provided as Attachment 2 to this report. The valuation provides for an annual rent of between \$65,000 and \$75,000 excluding GST (equating to \$162 and \$187 per m²).

Refer Attachment 2

Whether to Allow a New Sub-Lease

The management of the restaurant and function centre has been operating under the terms of the current sub-lease since 27 October 2022, enabling valuable insight as to its performance for the purpose of considering whether to grant a new sub-lease or not. The restaurant and function centre have proven to be a popular service for the community, with 43 functions already hosted at the time of writing this report. The Club also reports that the restaurant component remains popular, although very rarely reaching its capacity of 130 seated diners. Furthermore, the Club has introduced measures to mitigate any adverse

impacts on nearby residents, including the installation of a noise limiting machine to ensure that sound emissions remain below 45 decibels at all times (being both a legislative requirement and condition of the existing sub-lease), in addition to closing the eastern balcony and installing privacy film to prevent overlooking into nearby properties to the east at the Brighton Dunes retirement estate. The Club is also active in ensuring that the operators only book functions and entertainers that will not cause offence or a nuisance to nearby residents. These measures combined have ensured that formal complaints to Council have been both minimal (six received in the nine months since opening), and promptly resolved (no actual breaches of the sub-lease occurring).

In addition to considering past performance, Council may consider that there is further cause to grant a new sub-lease on the basis that the Club remains incapable of providing the service through its volunteers, and that the commercial activation of the first floor is an important source of revenue for the Club, being revenue that it re-invested into the building and facilities. Furthermore, the sub-lease provides a financial return to Council that it would otherwise not receive if the facility were managed by the Club's volunteers.

The counter argument to granting a new sub-lease remains the preferential accessibility and rewards that come from the exclusive use a community asset by a commercial entity. The granting of a subsequent sub-lease may set a precedent for other sporting and community clubs to follow, which whilst entirely appropriate under the terms of sporting and community club leases, may over time result in the attrition of indoor areas otherwise accessible to the public. Similarly, there may be issues of equity to consider, specifically whether the broader ratepayer base is disadvantaged by such outcomes, in that the opportunity to exclusively occupy a unique community asset is not otherwise available to other commercial providers operating from private premises.

Should Council be of the view that a new sub-lease should be granted based on recent performance and having regard to the invaluable service offered by the facility, and the financial sustainability provided to the Club by the commercial arrangement, then it would need to turn its mind to the terms of the sub-lease.

Terms of Sub Lease

Hours of Operation

Following a period of public consultation, and having considered representations from the broader community at the time, the City of Holdfast Bay's Council Assessment Panel (CAP) resolved at its meeting held on 27 April 2022 to grant approval to the change of land use for the first floor of the Club building to a restaurant and function centre, and in so doing, imposing restrictions to the operating hours to safeguard the amenity of nearby residents but also to protect the trade of the downstairs kiosk. The hours imposed by the CAP were consistent with those imposed from the outset by Council. These operating hours were included in the current sub-lease, and apply to both the restaurant and function centre uses, which are as follows:

Day	Council Assessment Panel Approved Hours
Monday	Closed
Tuesday	Closed

Wednesday	11.00 am to 10.00 pm
Thursday	11.00 am to 10.00 pm
Friday	11.00 to Midnight
Saturday	11.00 am to Midnight
Sunday	11.00 am to 10.00 pm
Public Holidays	As per relative day above

Having been informed by a community engagement process at the time, the Council may consider that there is merit in retaining the trading hours imposed by the CAP in any subsequent sub-lease. Maintaining the current hours of operation is also reasonable from the perspective that it will ensure that there is no interference to the downstairs kiosk, as required under the terms of the Head Lease between Council and the Club. With the Kiosk having trading hours of 8.00am to 3.00pm Monday to Friday, and 8.00am to 5.00pm on weekends, it would seem reasonable to maintain the existing hours imposed on the restaurant and function centre so as not to give rise to possible interference with the kiosk's times of trade. This report therefore recommends that the hours imposed by the CAP, and adopted as terms under the current sub-lease, continue under any future sub-lease.

Rent Period

Whilst the Club's preference is to have a new sub-lease granted for a period of five years with the option of a further five years upon renewal, it would seem responsible to limit the tenure commensurate with the period left to run on the Head Lease for the facility. In this regard, it is recommended that the should Council consider granting a new sub-lease, that it be for a limited period of three (3) years and forty (40) days from 28 October 2023 until 6 December 2026, when the term of the Head Lease ends. Furthermore, it is reasonable to limit the renewal period to two years, as this ensures that the arrangement is not long-term, empowering a subsequent Council to determine the future direction of the facility and whether to further extend the commercial arrangement, based on an evaluation of operations over a more meaningful period of time.

Rent Calculation

With the first floor of the Club building having undergone a change of land use for exclusive commercial use in 2022, Council's policies require charging a rent akin to that expected in the open market, in recognition that the upstairs area will no longer be freely available to the community, with all profits retained by a third-party commercial operator. Whilst the *Commercial Leasing & Licensing Policy* requires that the rent must reflect a rent that could reasonably be obtained in the open market determined by an independent valuation, and therefore in accordance with the valuation provided as Attachment 2, the Policy does enable Council to consider other factors in determining the final rent, including whether a portion is returned to Council, and if so, what amount. It is recommended that should Council grant a new sub-lease to the Club, that the rent applied be the higher end of the valuation (i.e. \$75,000 excl. GST per annum) and that 30% of the rent is returned to Council, based on the following grounds:

1. In recognition of Council's 30% equity in the first floor of the facility by virtue of an investment of \$400,000 towards the overall construction cost at the time of the facility's upgrade in 2005; and

2. For consistency with the approach taken for the sub-leases of both the Somerton Kiosk and the Holdfast Bay Bowling Club, where 30% of the rent is returned to Council under those sub-lease agreements.

In this regard, the rent equation would take its cues from an independent valuation (adopting the higher range provided by McGees Property in Attachment 2), whilst acknowledging the Council's equity in the sub-leased area. The rent equation could therefore resemble the following:

Market Rent Valuation: \$75,000 excl. GST per annum
 30% return to Council: \$22,500 excl. GST per annum
 Club retains: \$52,500 excl. GST per annum

Summary

The merits as to whether the first floor of the Somerton Park Surf Life Saving Club building should be set aside for exclusive use by a commercial entity have previously been resolved by way of decisions in the affirmative by both Council (as landowner) and by the Council's Assessment Panel (as planning authority). Unless the performance of the restaurant and function centre over the past few months have provided cause for doubt, then it may be reasonable to expect that the Council would grant a new sub-lease, enabling the continuation of a popular service, whilst also ensuring the financial security of the Club to assist with the costs of maintaining its facility. A point worth considering is that irrespective of which entity manages the first floor (i.e. the Club or a commercial partner), the space could continue to be used for its approved land use as a dining/entertainment venue. The downside of not having the space professionally managed is that the alternative offering is likely to be sub-standard, with a reduced financial return to both the Club and Council.

Should Council decide to grant a new sub-lease to the Club, and having regard to the arguments presented in this report, it is recommended that the following terms are included in the schedule that informs the sub-lease, representing reasonable terms for all parties:

Lessor:	City of Holdfast Bay
Lessee:	Somerton Surf Lifesaving Club Incorporated ABN 85 241 889 464
Sub-Lessee	Gambell & Sutton Pty Ltd ACN 637 647 940
Lease Area:	That 402m ² portion of the land in Certificate of Title Volume 6212 Folio 956 comprising the first floor restaurant and function centre as delineated in red on the plan annexed hereto as Attachment 1 and situated at the Somerton Surf Lifesaving Club located at 57 Repton Road, North Brighton SA 5048
Permitted Use:	A licensed restaurant and function centre operated in accordance with the approved land use and conditions imposed through Development Application Number 21029363
Commencement Date:	28 October 2023

Sublease Period:	Three (3) years and forty (40) days from 28 October 2023 until 6 December 2026
Option to Renew	Two (2) years (providing the Head Lease is renewed beyond 6 December 2026)
Annual Rent (payable by the sublessee to the Club):	\$75,000 excl. GST increased annually by CPI (Adelaide All-Groups)
Rent Payable to Council (payable by the Club to Council that is in addition to any other payments made by the Club to Council established by separate agreements, leases and sub-leases)	\$22,500 excl. GST increased annually by CPI (Adelaide All-Groups)
Payment Terms:	Monthly, in advance
Rent Review:	The rent shall be increased by CPI (Adelaide All-Groups) annually thereafter

Attachment 3 to this report provides the extended schedule for inclusion in the sub-lease.

Refer Attachment 3

BUDGET

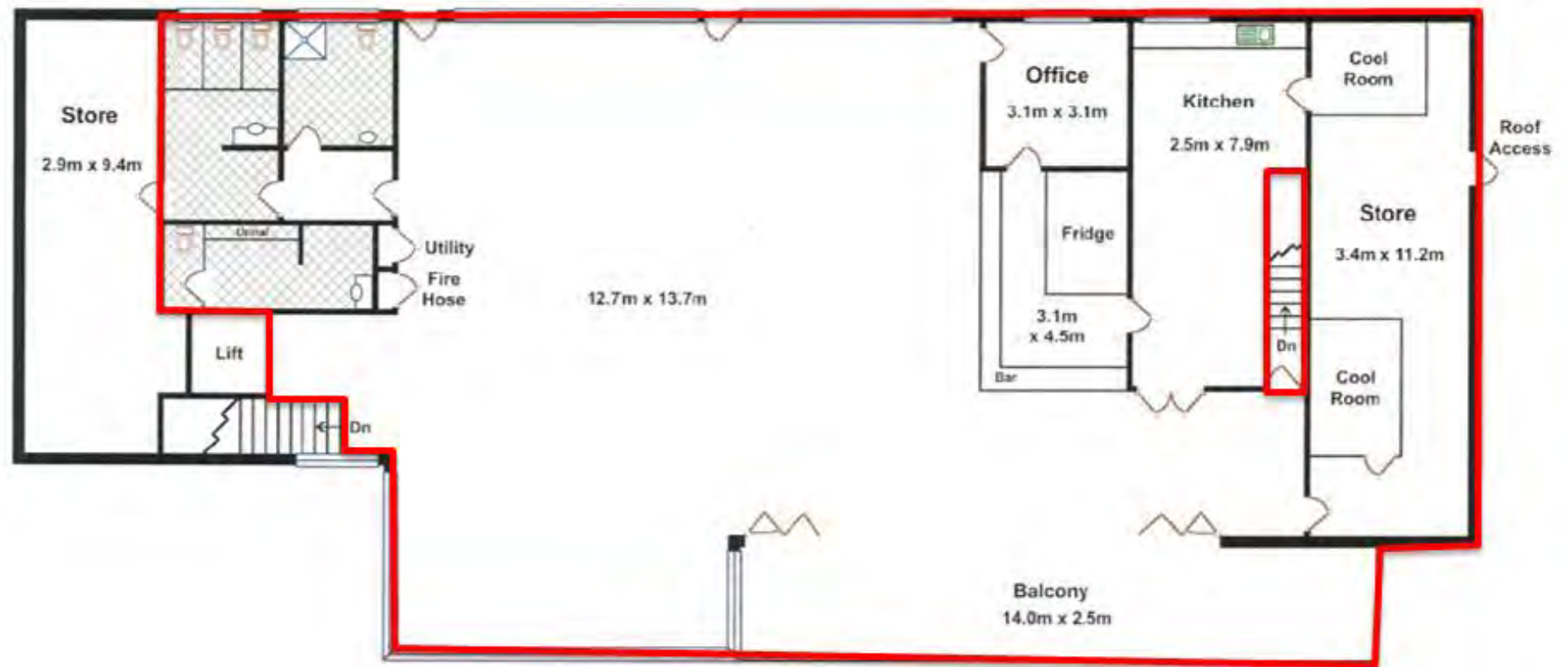
An annual budget allocation is provided for the review and implementation of property leases and for maintenance responsibilities retained by Council under the Lease. This budget includes the engagement of legal advice and services for the preparation of the lease agreement. This sub-lease will have a positive effect on the 2023/24 operational budget as Council will receive \$22,500 excl. GST in rent.

LIFE CYCLE COSTS

Under the terms of the Head Lease, Council is already responsible for the structural maintenance of the Premises, the costs of which is included in the Long-Term Financial Plan.

Attachment 1

Sub-Leasable Area = 402m²



Attachment 2



Rent Assessment

**57 Repton Road
Somerton Park SA 5044**

Under instructions from:

Mr Anthony Marroncelli
Manager Development Services
City of Holdfast Bay
24 Jetty Road
BRIGHTON SA 5048

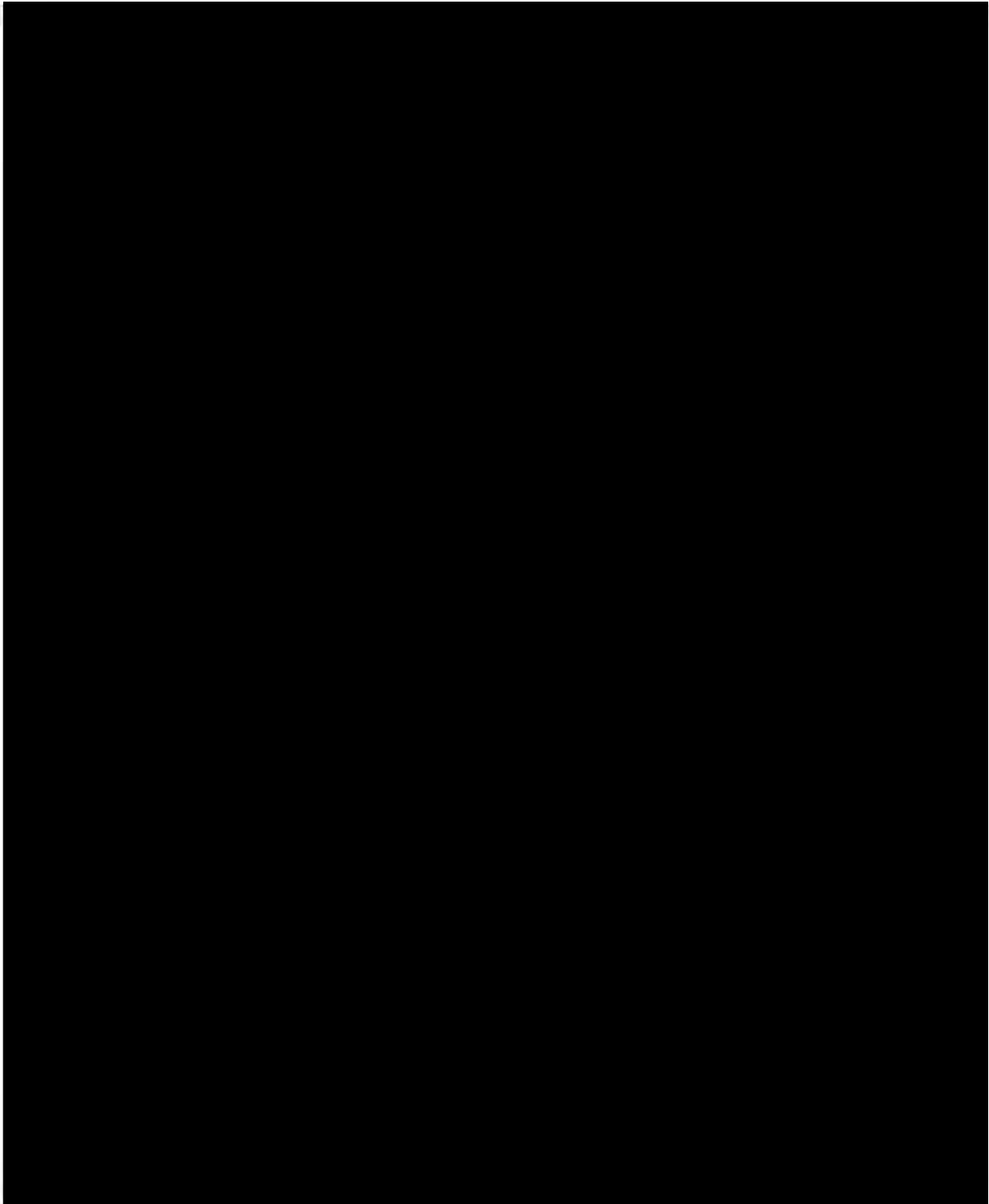
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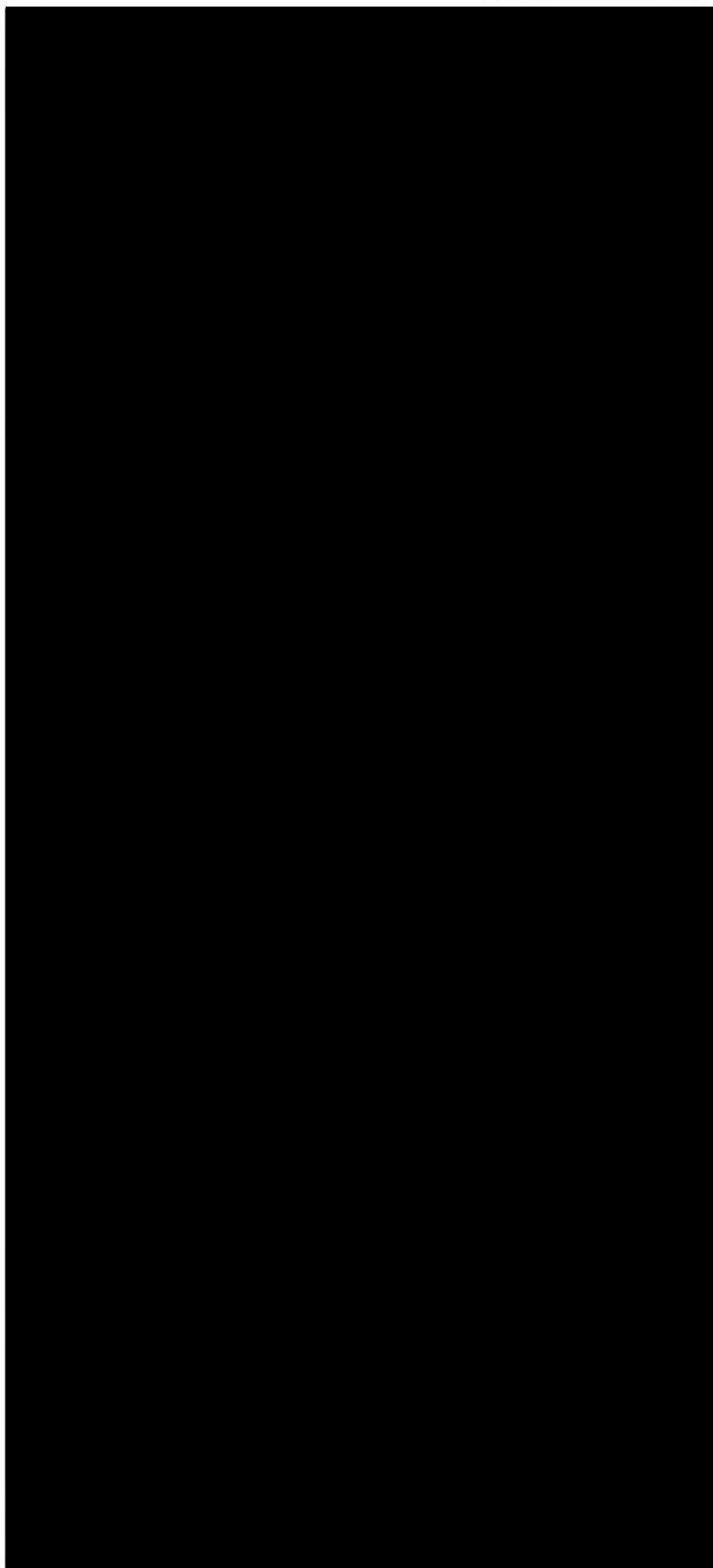
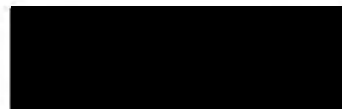


SUMMARY

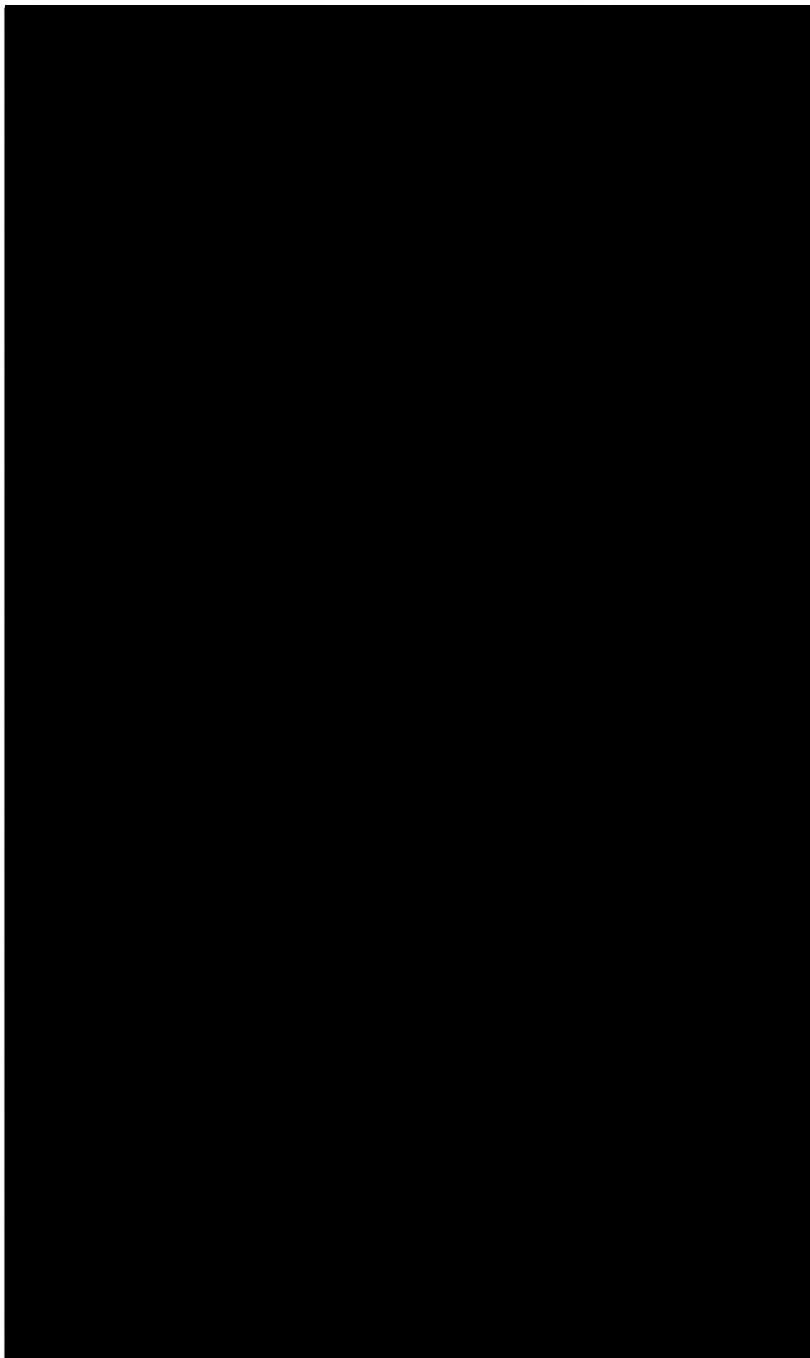
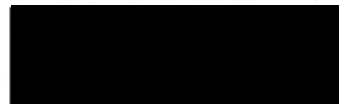
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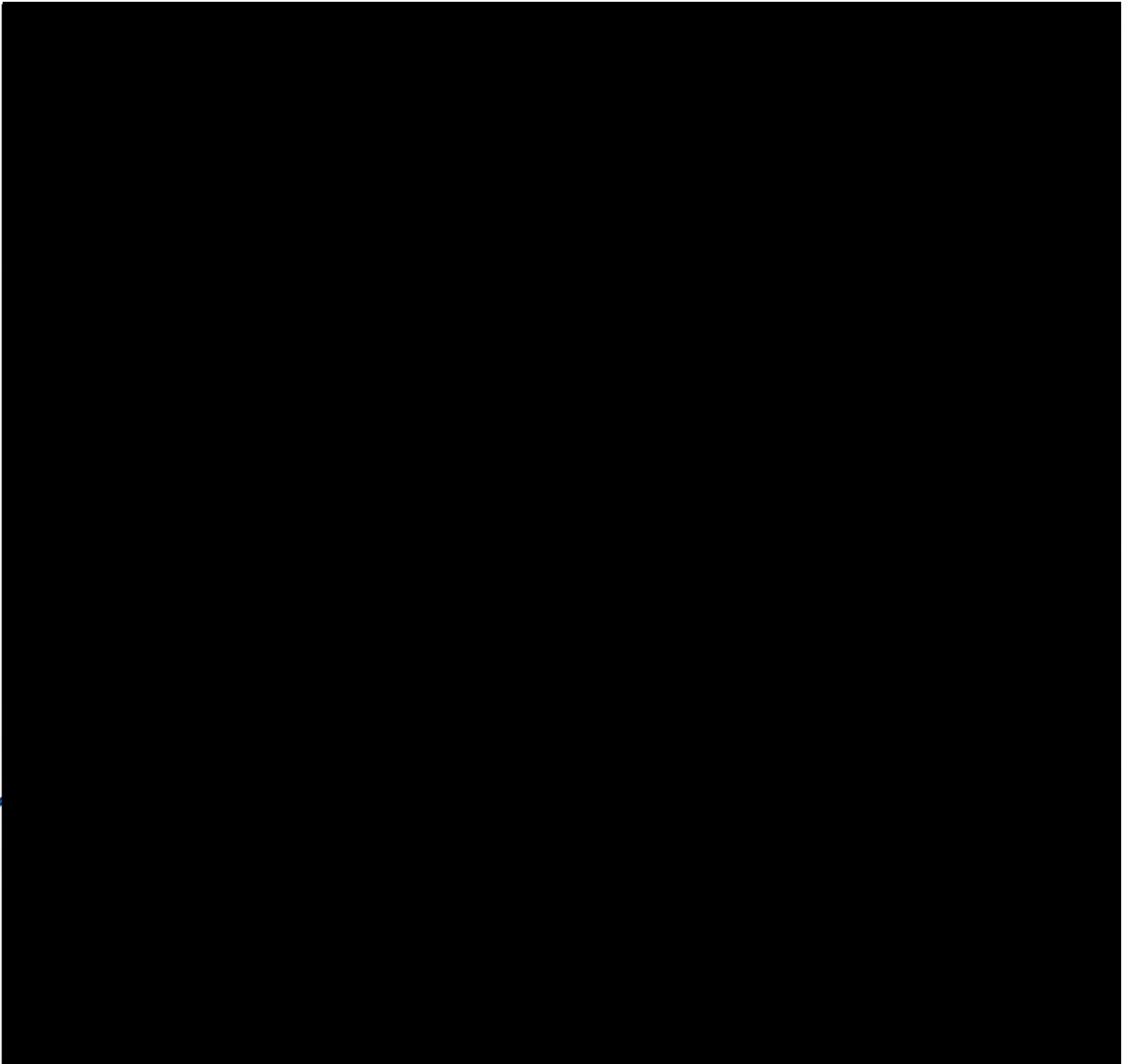
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57 Repton Road, Somerton Park SA 5044







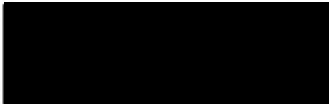
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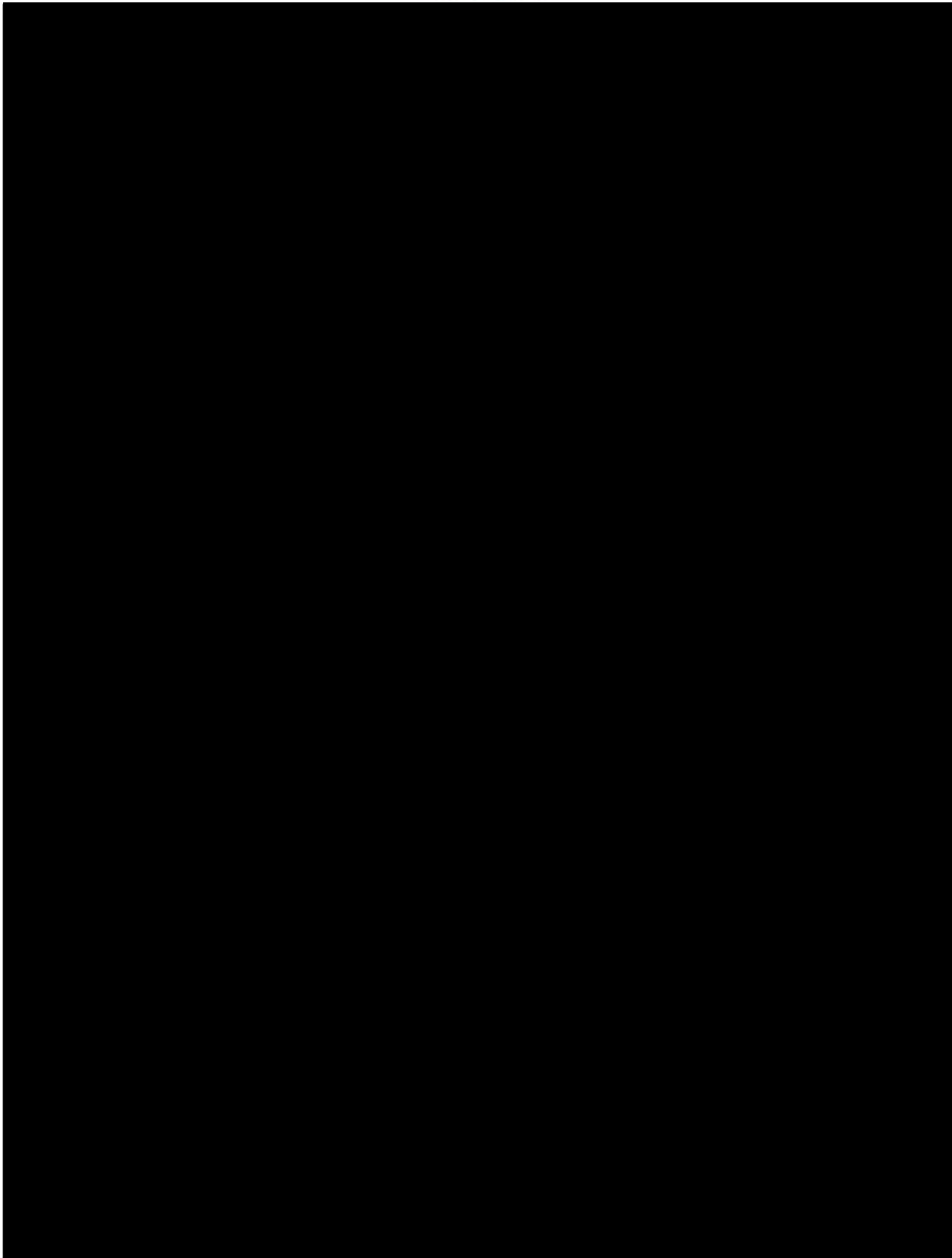


APPENDICES

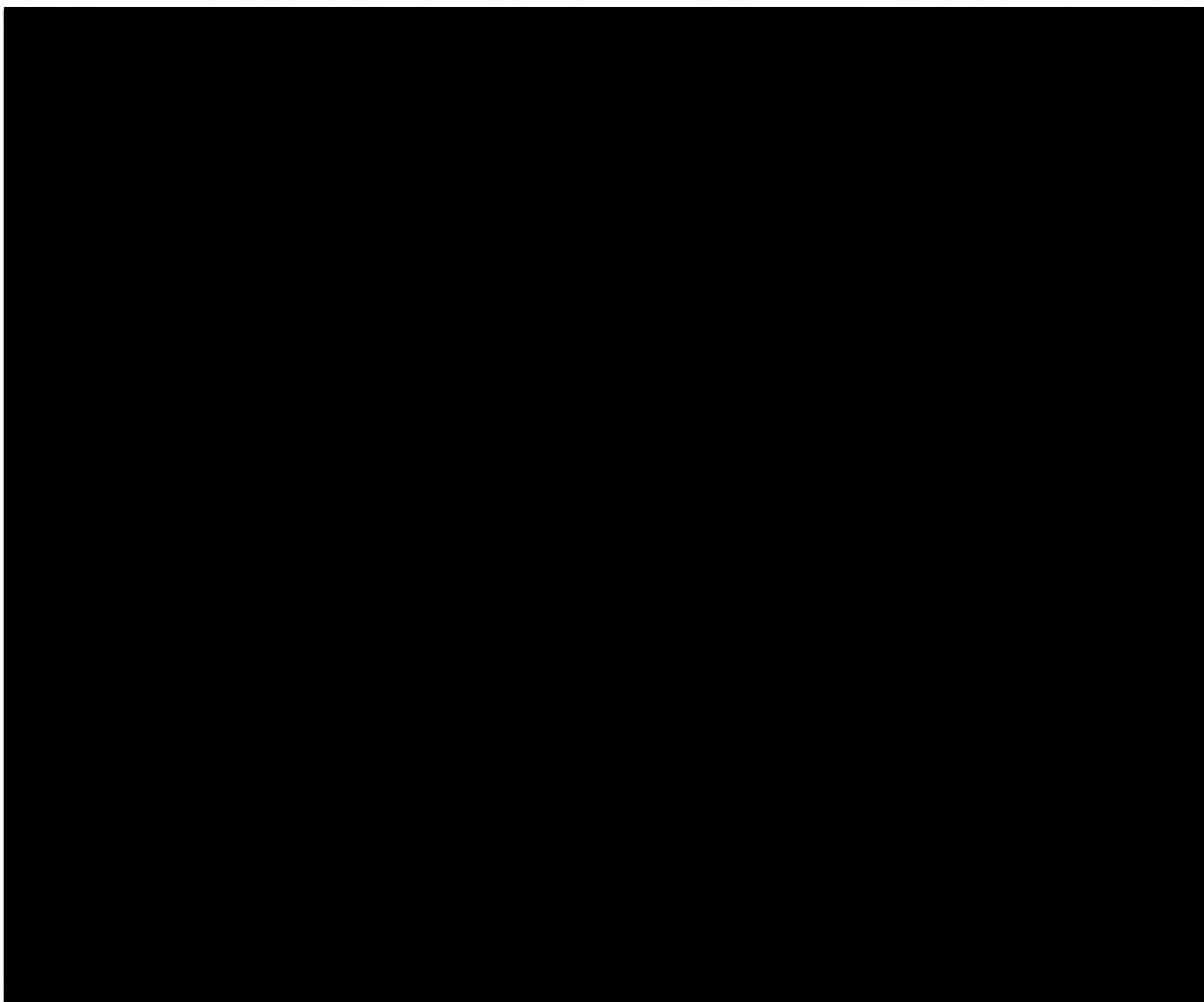
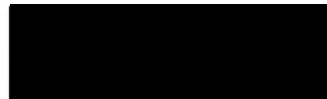
Letter of Instructions
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Deposited Plan
Planning and Design Code Extract
Photographs
Licence
Sub-Lease
Development Approval

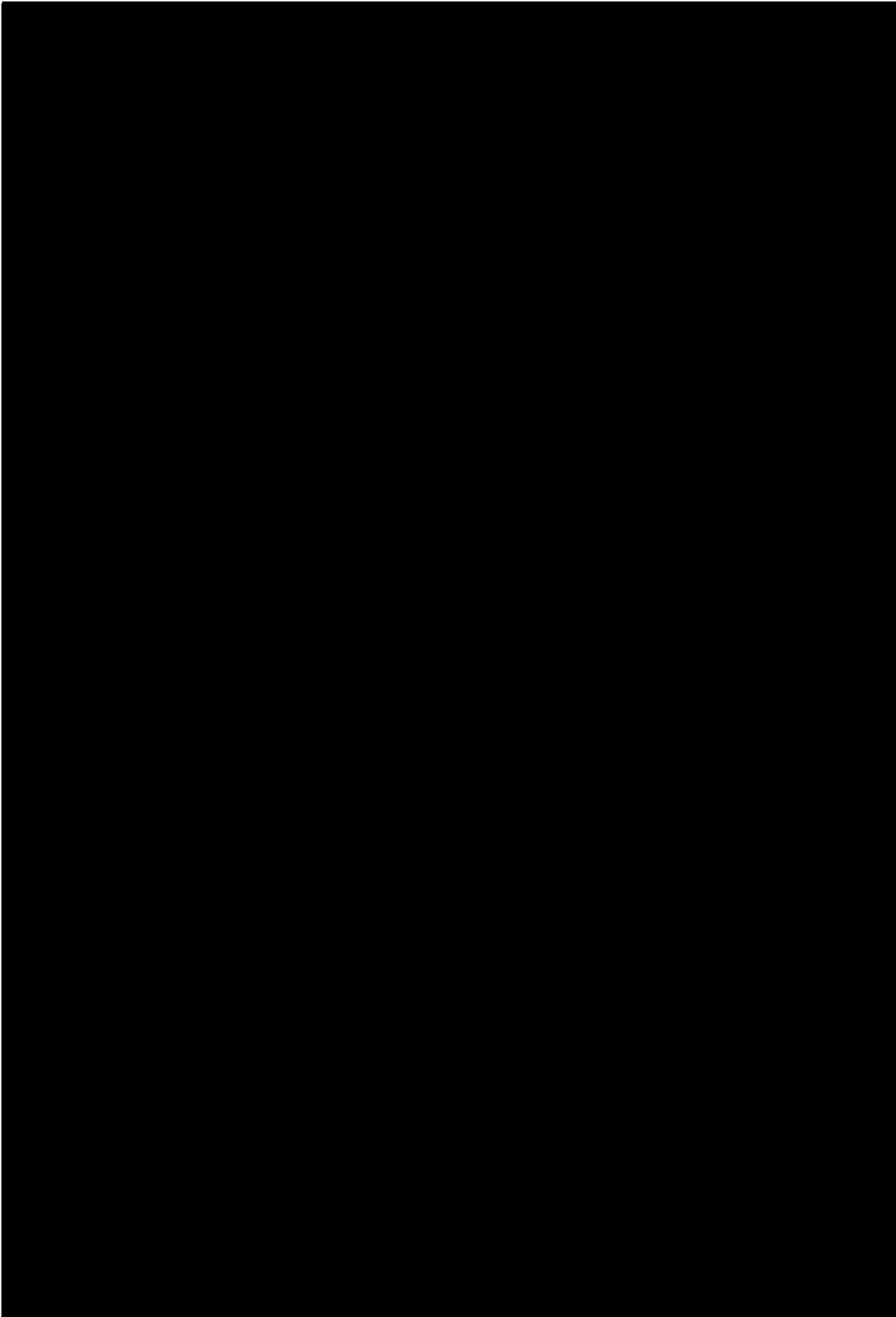
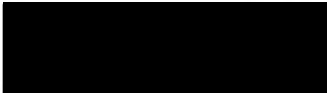


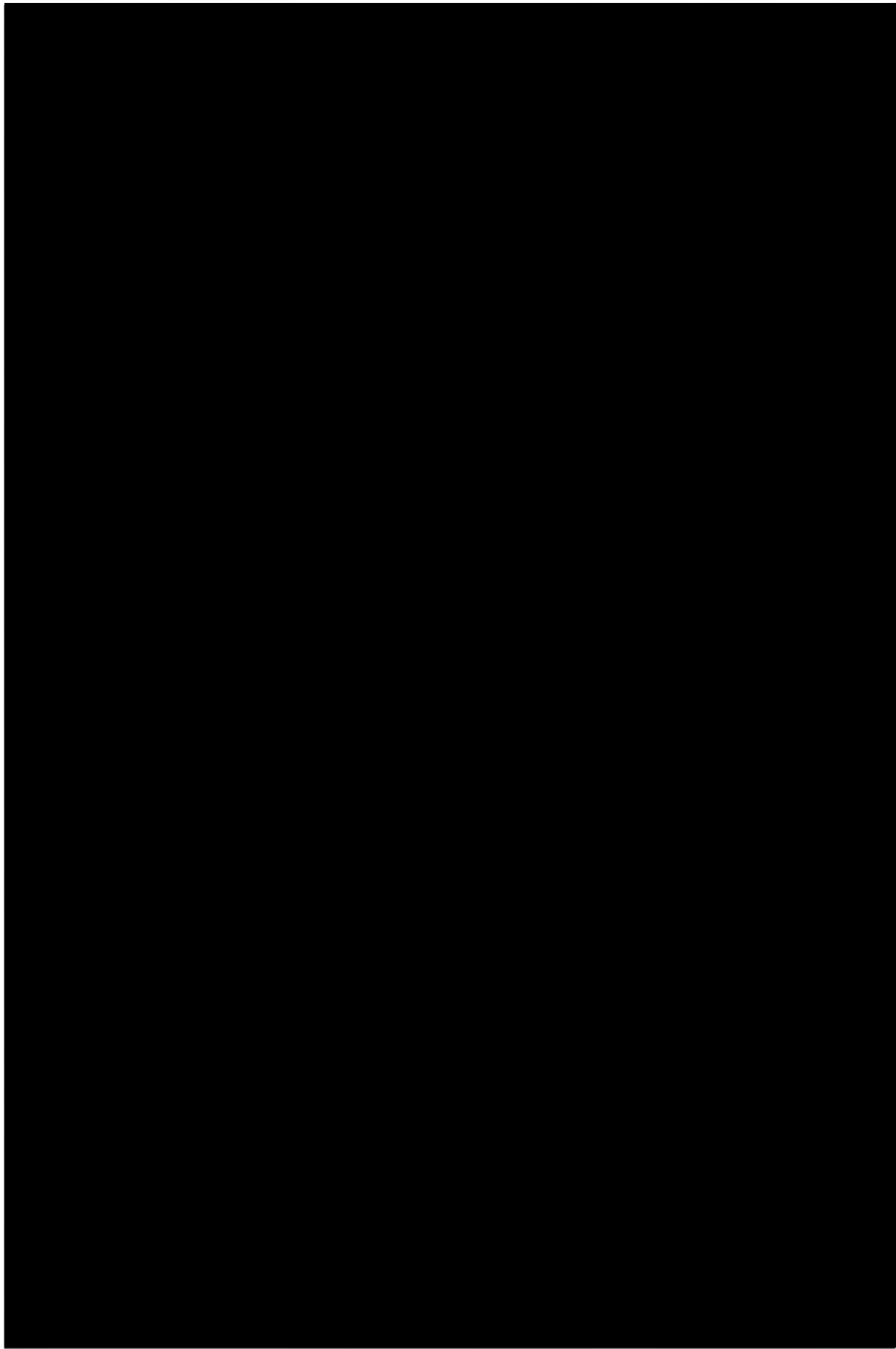
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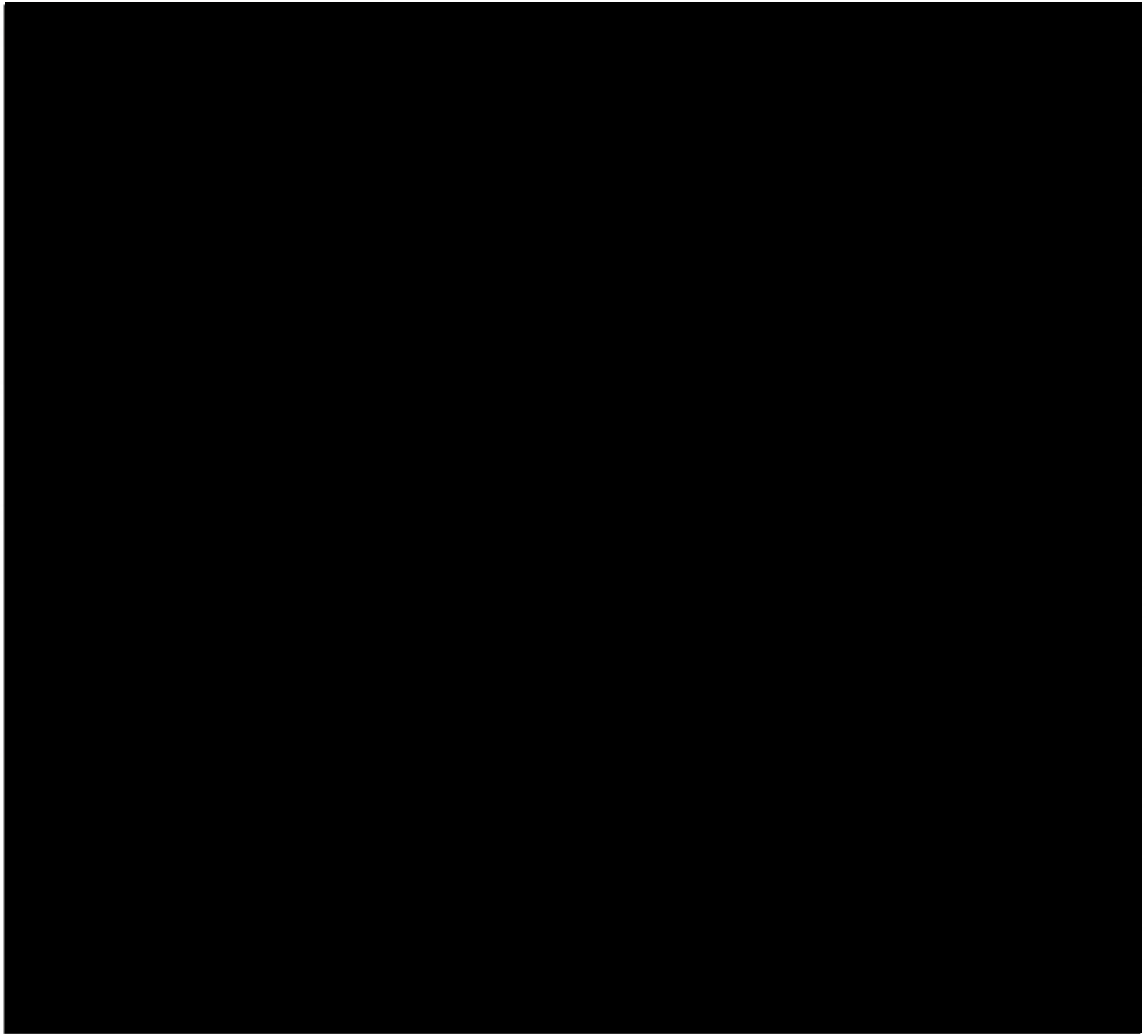


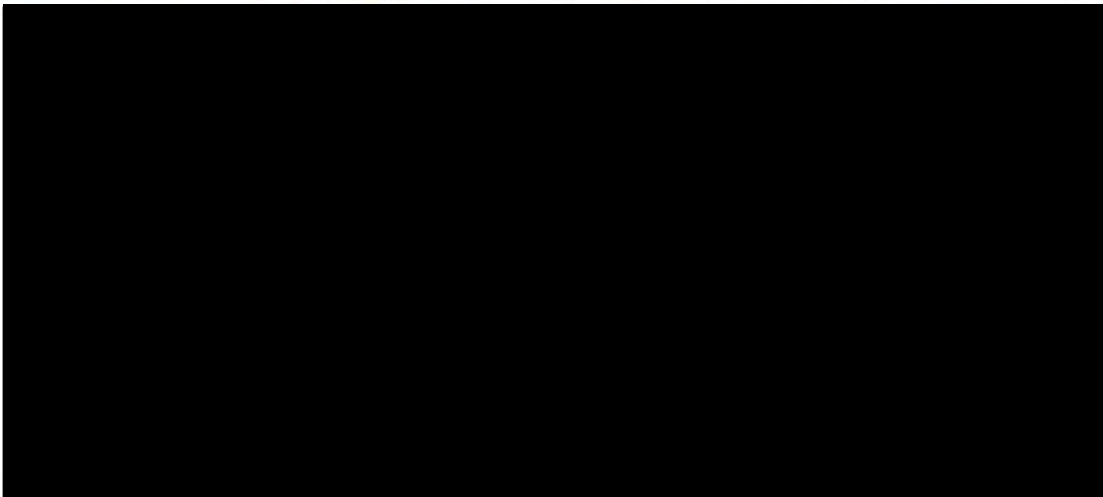
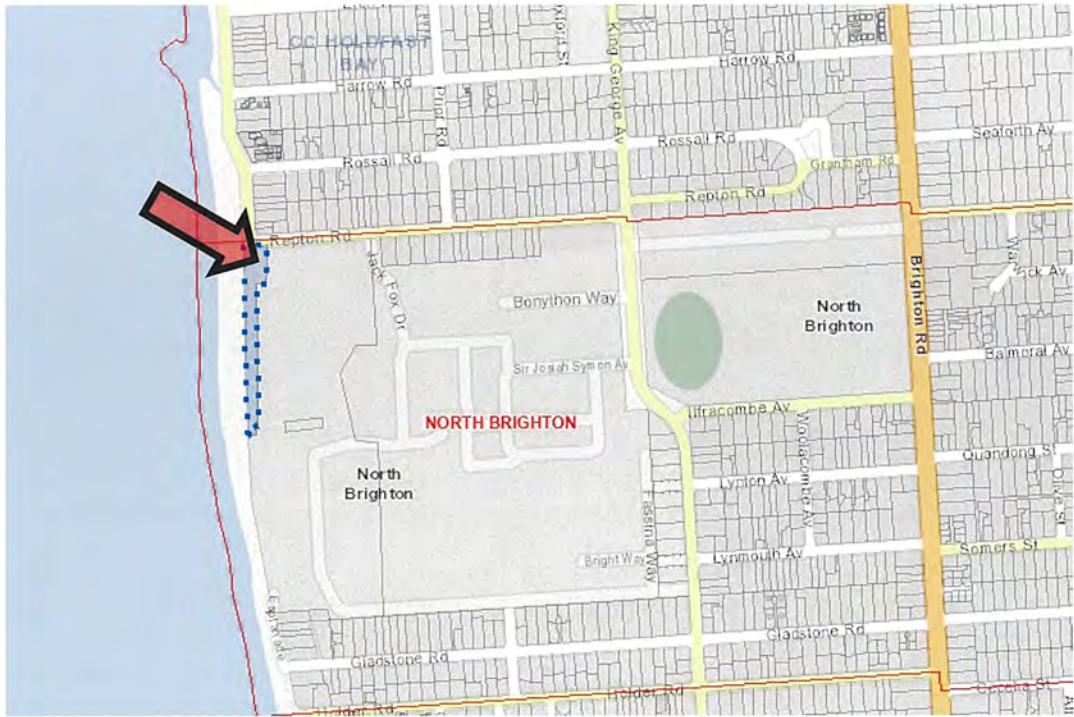
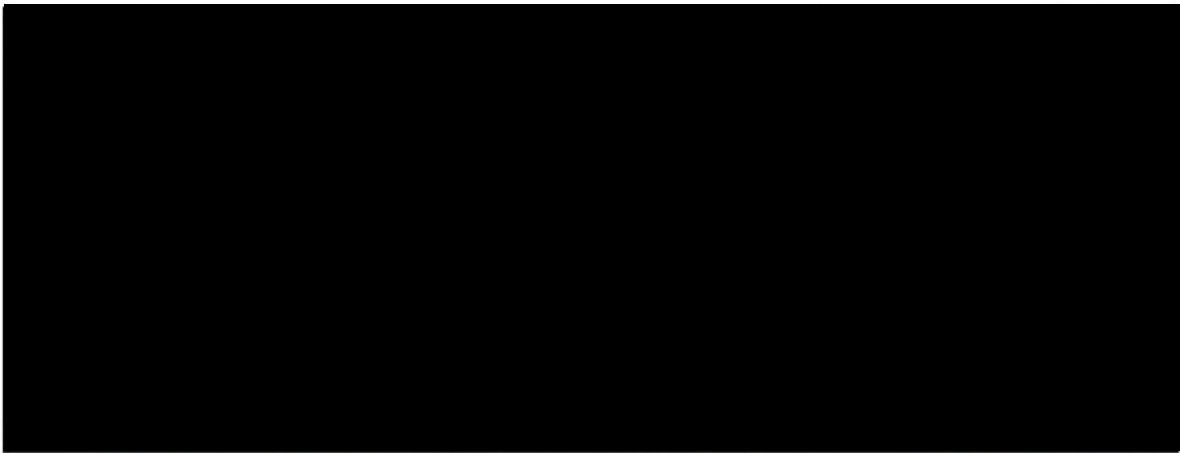


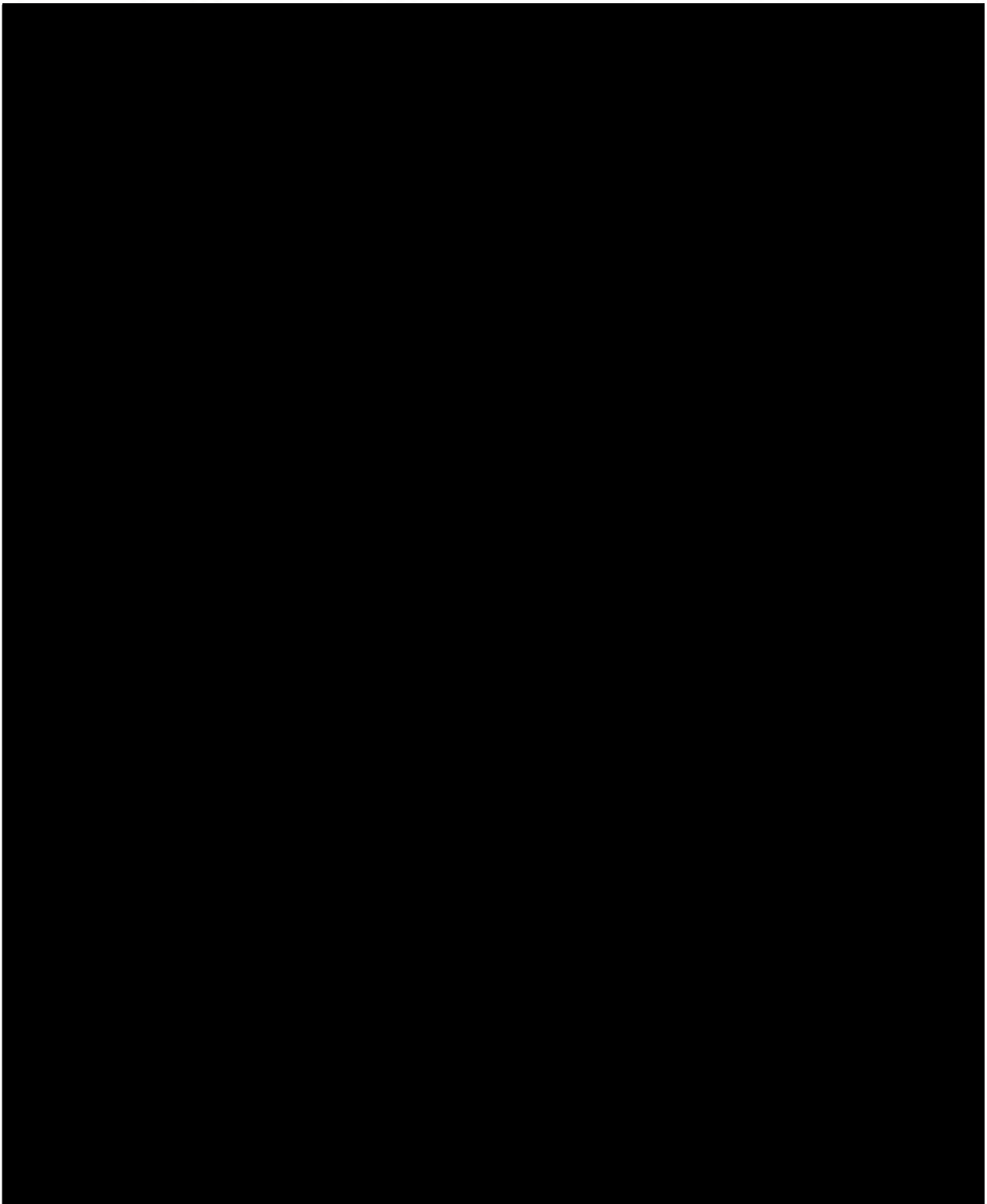


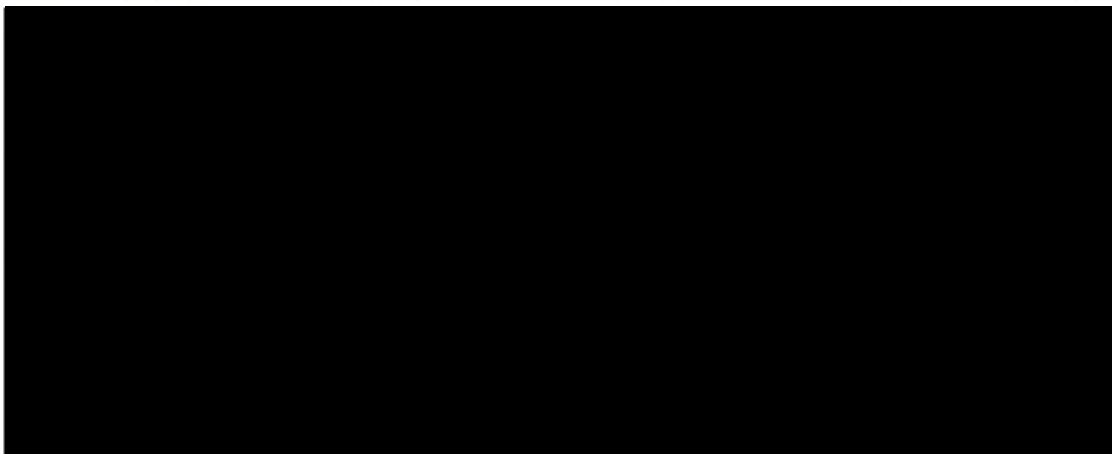
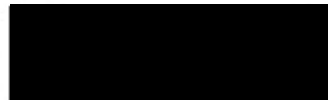


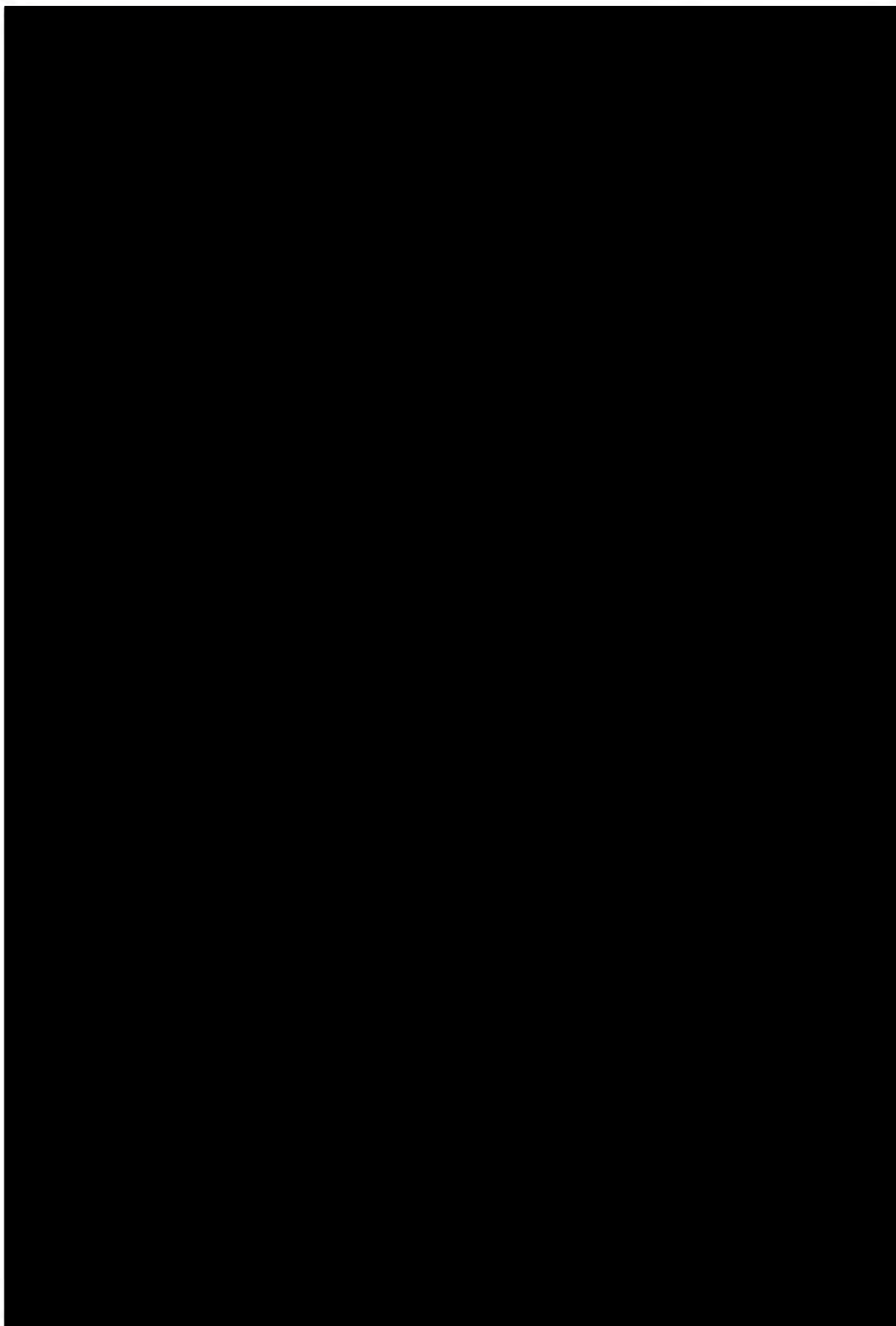




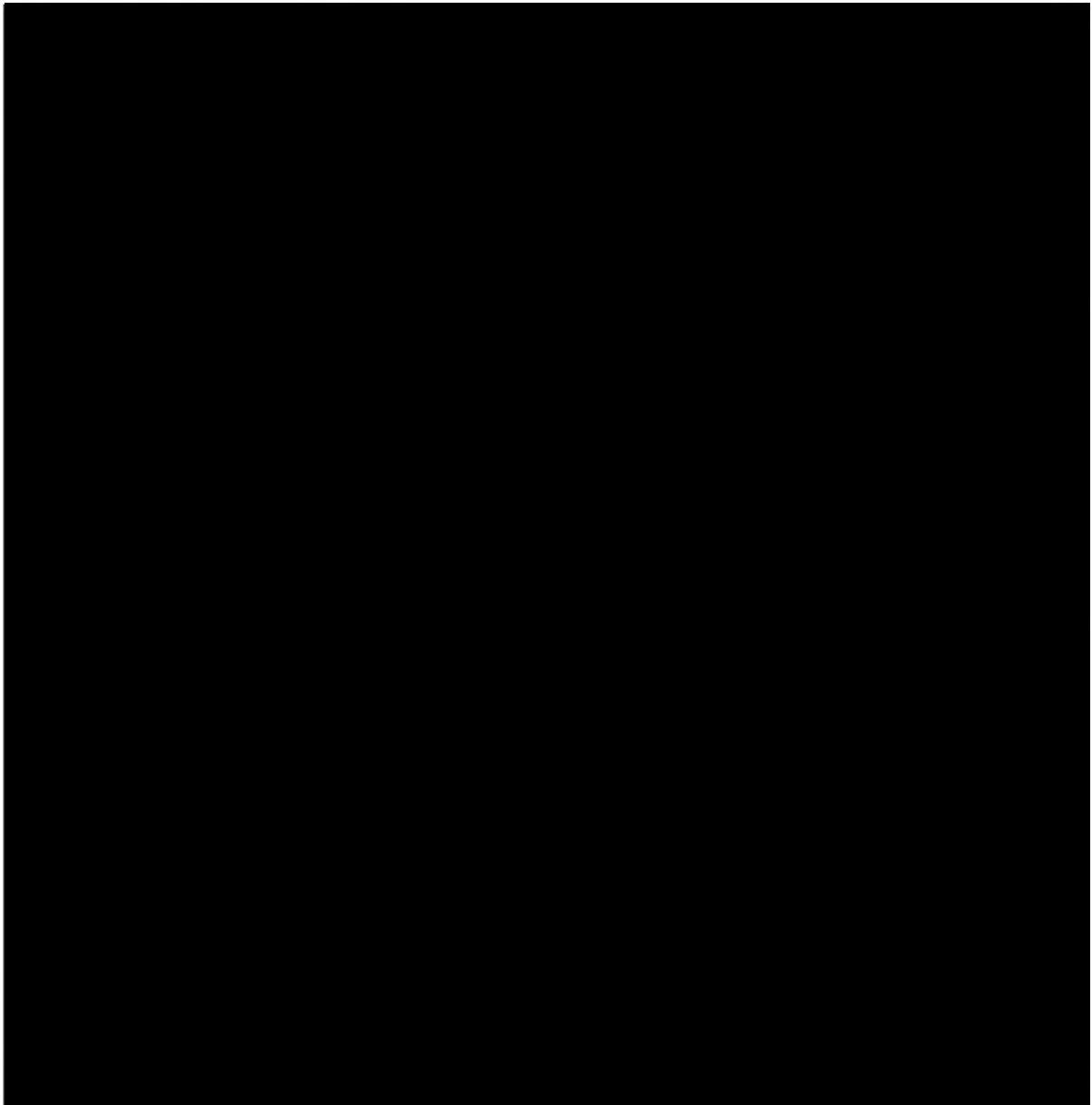


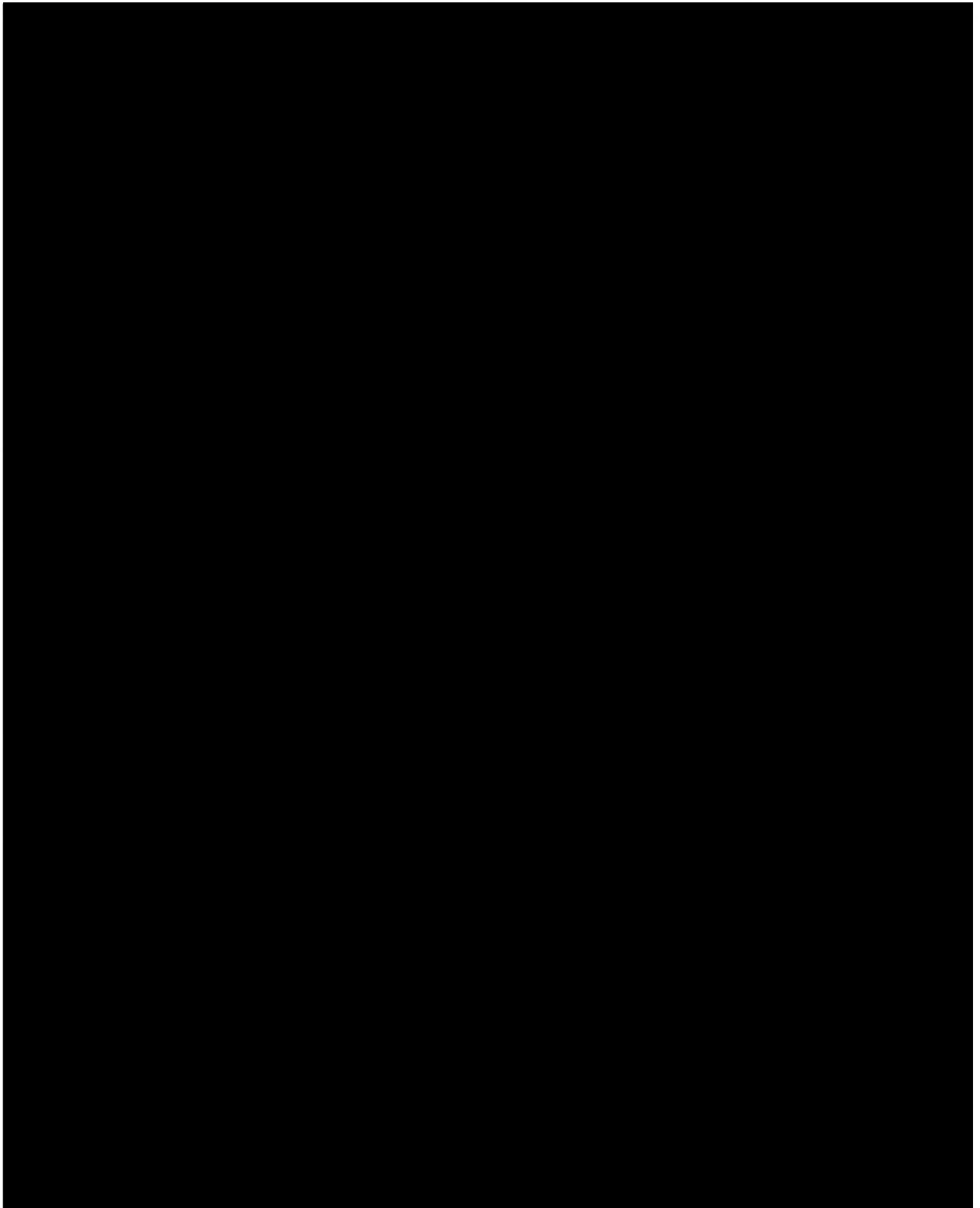


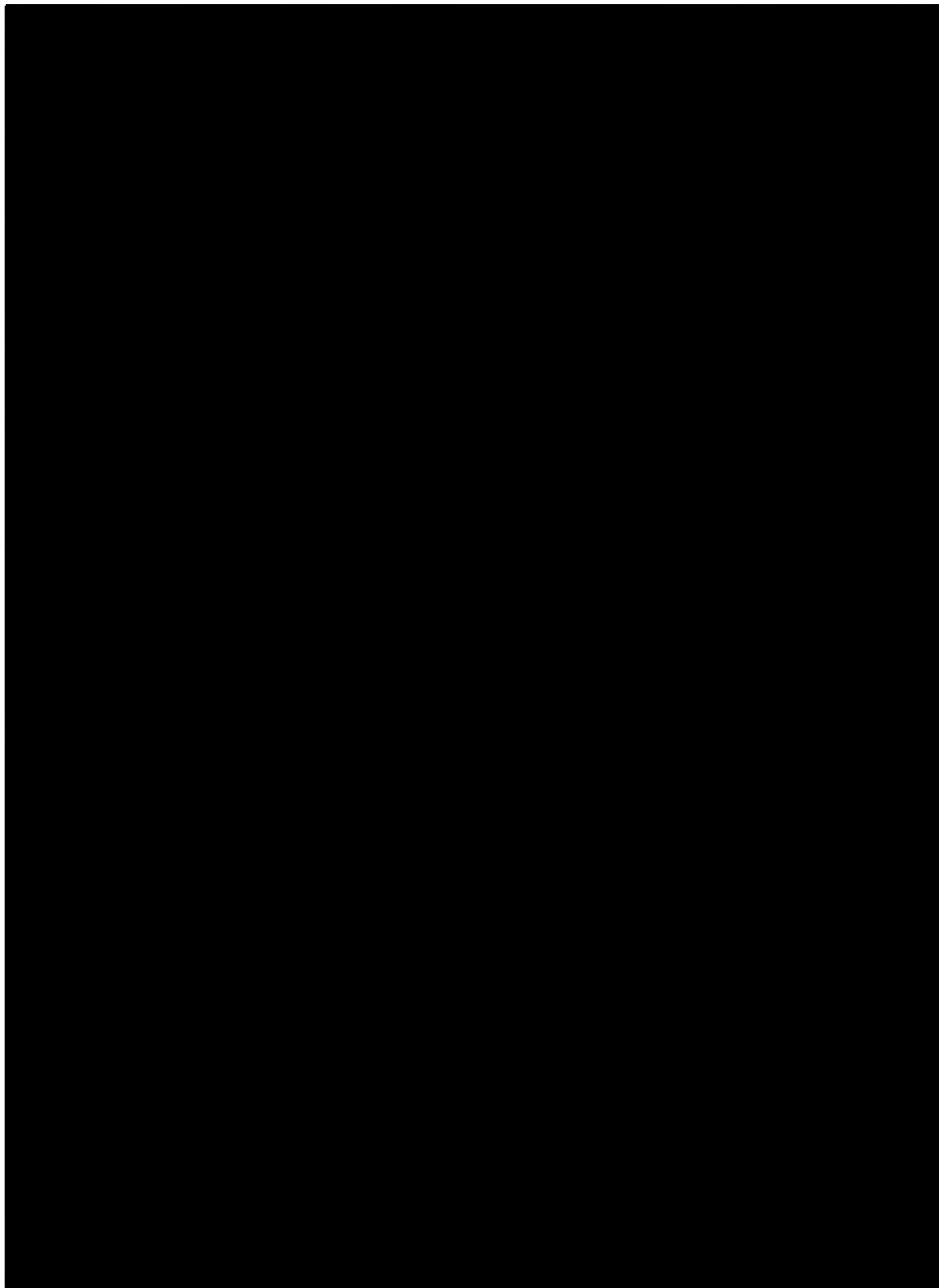
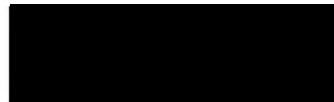


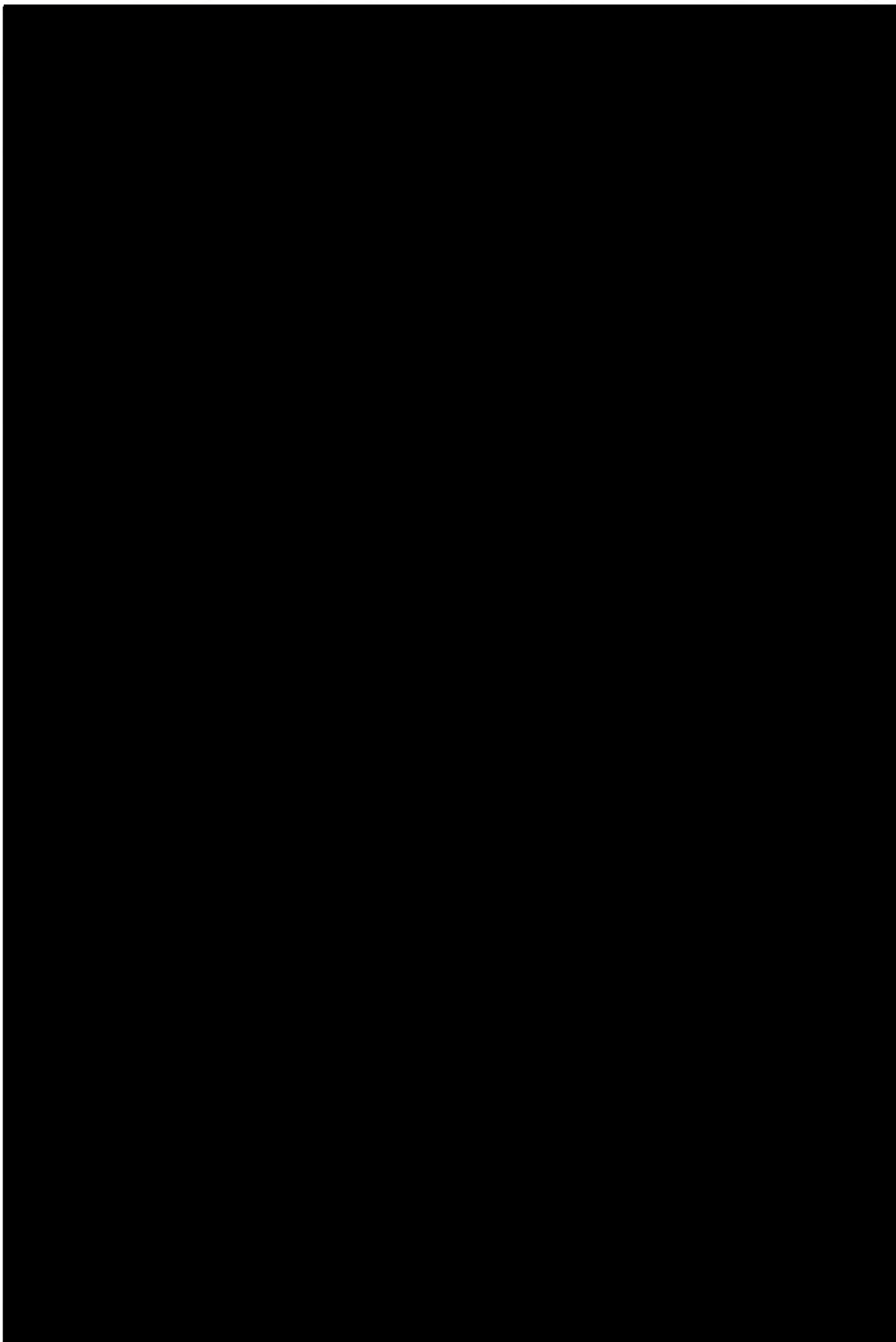
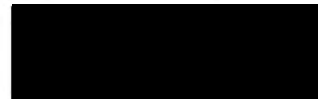


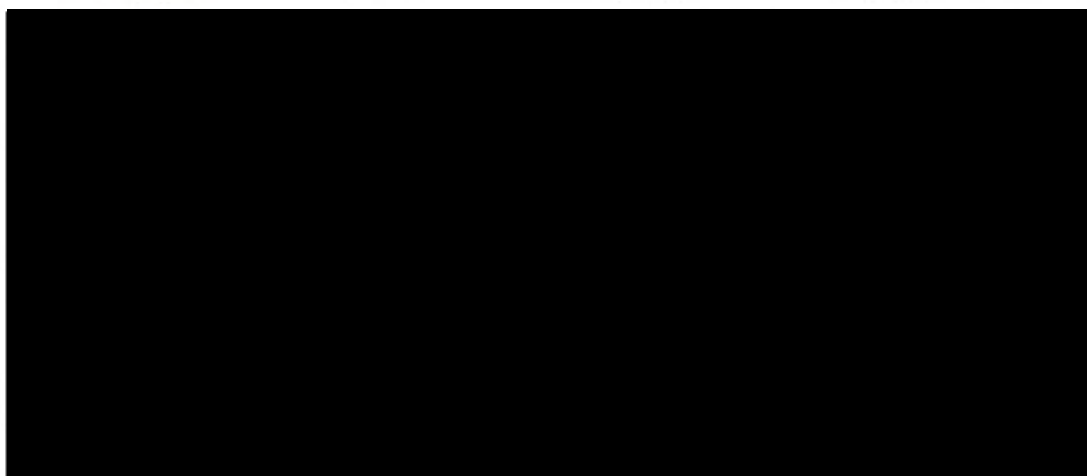
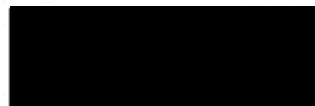


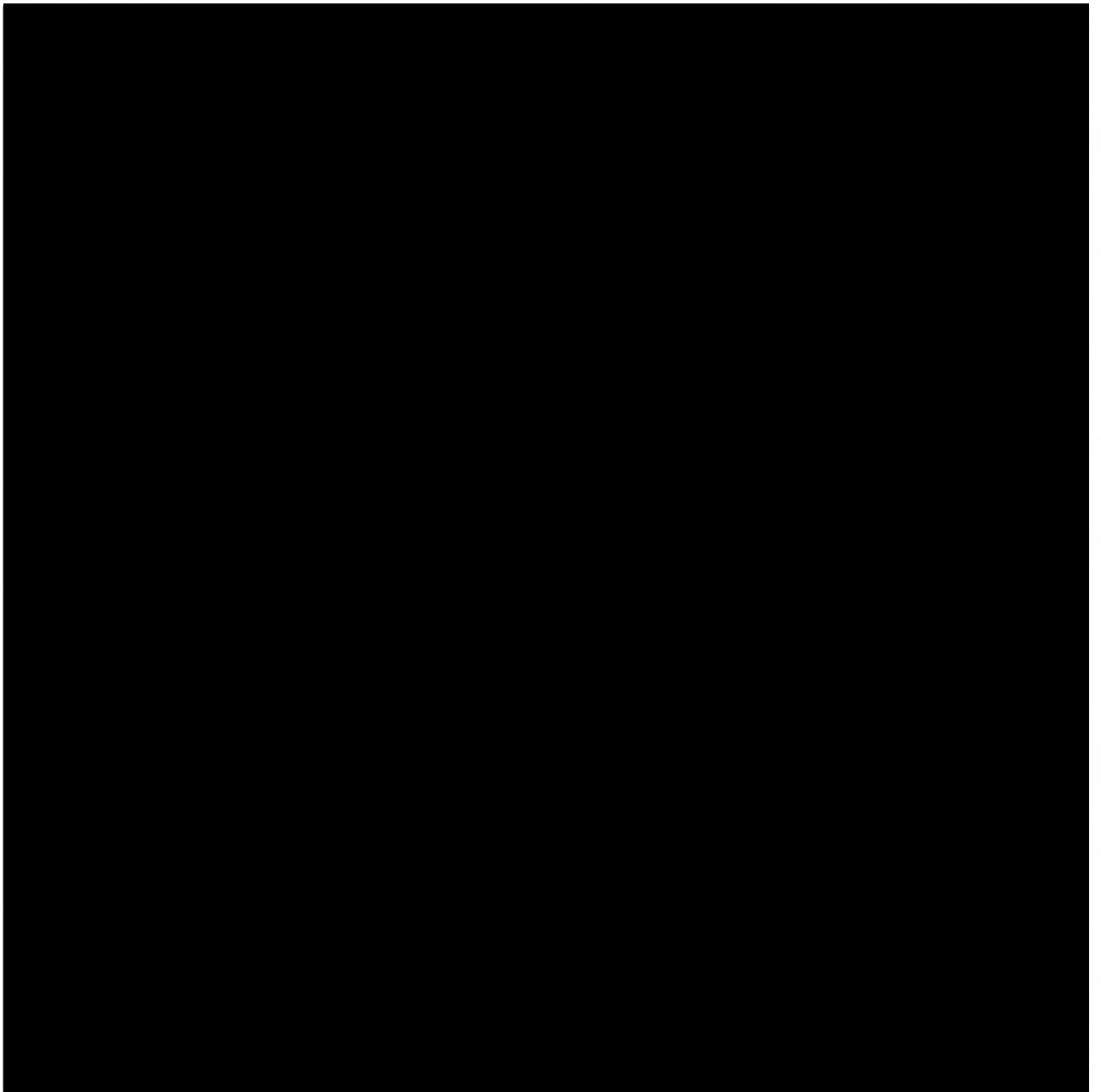














LETTER OF INSTRUCTIONS

Subject: FW: Market Rent Valuation Request - Somerton SLSC Upstairs Restaurant & Function Centre

Attachments: Somerton SLSC - Photo.jpg; Somerton SLSC - Sub-Leasable Area.pdf; Somerton SLSC - Development Approval.pdf; Sublease to Gambell Sutton (final clean) (00473086xDE74C).pdf; Valuation Report - Market Rent Assessment - Somerton Park Surf Life Saving Club.pdf; 32491_12trrra.docx; 31549_12trrra.docx; 32360_12trtrvc.docx

From: Anthony Marroncelli <amarroncelli@holdfast.sa.gov.au>
Sent: Thursday, April 13, 2023 10:44 AM

[REDACTED]

Subject: RE: Market Rent Valuation Request - Somerton SLSC Upstairs Restaurant & Function Centre

You don't often get email from amarroncelli@holdfast.sa.gov.au. [Learn why this is important](#)

Caution: This is an external email and may be malicious. Please take care when clicking links or opening attachments.

[REDACTED]

Thank you for accepting the invitation to undertake the valuation, that's very much appreciated! Council accepts the fee proposal to complete the market rent assessment, so please feel free to proceed with the work when convenient for you.

The contact details for access to the premises are as follows:

Davey Taylor
Somerton SLSC Facilities Manager
Facilities@somertonsurfclub.com.au

[REDACTED]

Thank you again for assisting Council with this matter.

Regards,



ANTHONY MARRONCELLI
Manager Development Services
City of Holdfast Bay
08 8229 9904
0408897033
amarroncelli@holdfast.sa.gov.au



CURRENT TITLE SEARCH

Certificate of Title - Volume 6212 Folio 956

Parent Title(s)	CT 5476/969, CT 6198/457		
Creating Dealing(s)	RTC 12951355		
Title Issued	30/08/2018	Edition 2	Edition Issued 30/08/2018

Estate Type

FEE SIMPLE

Registered Proprietor

CITY OF HOLDFAST BAY
OF PO BOX 19 BRIGHTON SA 5048

Description of Land

ALLOTMENT 21 DEPOSITED PLAN 117606
IN THE AREA NAMED NORTH BRIGHTON
HUNDRED OF NOARLUNGA

Easements

NIL

Schedule of Dealings

Dealing Number	Description
12951356	ENCUMBRANCE TO MINDA INC.

Notations

Dealings Affecting Title	NIL
Priority Notices	NIL
Notations on Plan	NIL
Registrar-General's Notes	NIL

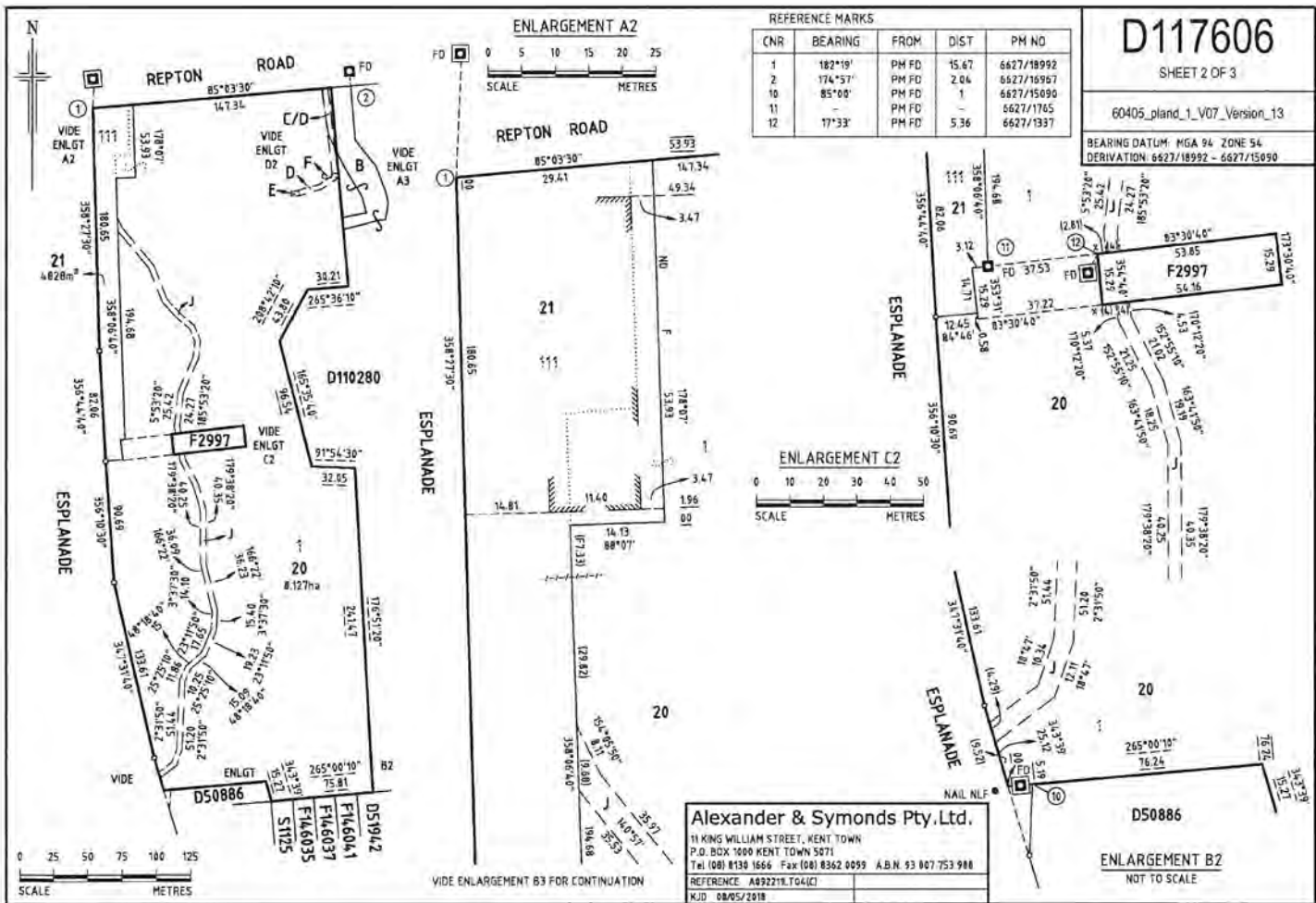
Administrative Interests

CONFIRMED IN SA HERITAGE REGISTER 01/09/1983



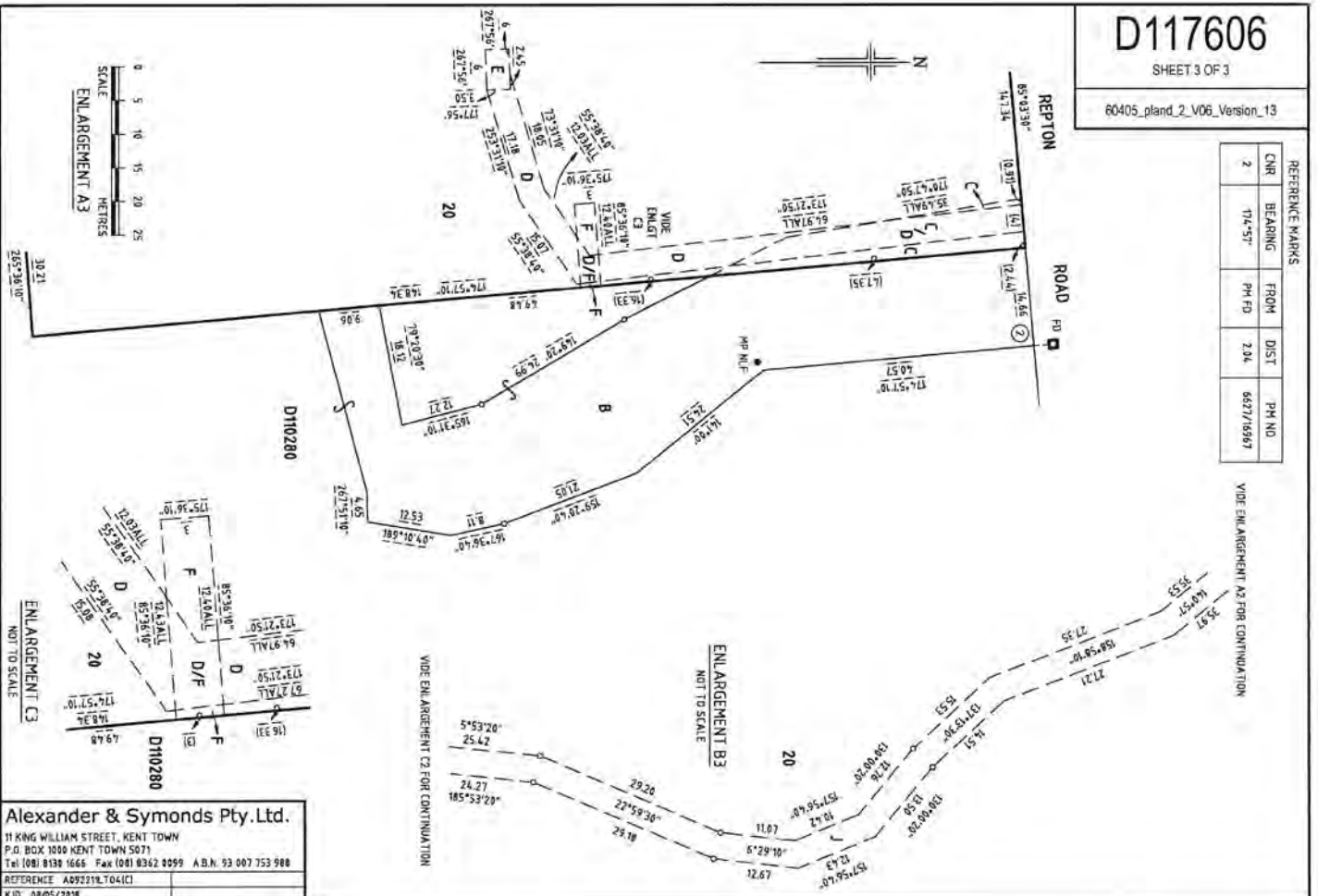
DEPOSITED PLAN

PURPOSE:	DIVISION	AREA NAME:	NORTH BRIGHTON	RE-APPROVED:	 D117606 SHEET 1 OF 3 <small>60405_text_01_v13_Version_13</small>					
MAP REF:	6627/01A	COUNCIL:	CITY OF HOLTFAST BAY	DEPOSITED:						
LAST PLAN:		DEVELOPMENT NO:	110/00660/17/001/52059	SANDY BEAGLEHOLE 30/09/2018						
AGENT DETAILS:		SURVEYORS CERTIFICATION:		I MARK ANTONY PETER WILLIAMS, a licensed surveyor do hereby certify - 1) That this plan has been made from surveys carried out by me or under my personal supervision and in accordance with the Survey Act 1992. 2) That the field work was completed on the 27th day of October 2017 16th day of May 2018 Mark Antony Peter Williams Licensed Surveyor						
ALEXANDER & SYMONDS PTY LTD 1ST FLOOR 11 KING WILLIAM ST KENT TOWN SA 5067 PH: 81301666 FAX: 83620099 AGENT CODE: ALSY REFERENCE: A092211LTD4(C)										
SUBJECT TITLE DETAILS:										
PREFIX	VOLUME	FOLIO	OTHER	PARCEL	NUMBER	PLAN	NUMBER	HUNDRED / IA / DIVISION	TOWN	REFERENCE NUMBER
PT CT	6198	457		ALLOTMENT(S)	1	D	110260	NOARLUNGA		
CT	5476	968		ALLOTMENT(S)	111	F	2697	NOARLUNGA		
OTHER TITLES AFFECTED:										
EASEMENT DETAILS:										
STATUS	LAND BURDENED	FORM	CATEGORY	IDENTIFIER	PURPOSE	IN FAVOUR OF			CREATION	
EXTINGUISH	2 IN D110280	SHORT	FREE AND UNRESTRICTED RIGHT(S) OF WAY	B		1 IN D110280 NOW CONTAINED IN 21			RTC 12613028	
EXISTING		SHORT	FREE AND UNRESTRICTED RIGHT(S) OF WAY	B		20			RTC 12613028	
EXISTING	20	SHORT	FREE AND UNRESTRICTED RIGHT(S) OF WAY	C					RTC 12613028	
EXISTING	20	LONG	EASEMENT(S)	D					TG 12313421	
EXISTING	20	SERVICE	EASEMENT(S)	F	FOR SEWERAGE PURPOSES	SOUTH AUSTRALIAN WATER CORPORATION			223LG RPA	
EXISTING	20	LONG	EASEMENT(S)	E					TG 12313421	
EXISTING	20	LONG	RIGHT(S) OF WAY	J		THE COUNCIL FOR THE AREA			TG 12764238	
ANNOTATIONS: NO OCCUPATION ON SUBJECT LAND BOUNDARIES UNLESS OTHERWISE SHOWN										



SHEET 3 OF 3

REFERENCE MARKS				
CNR	BEARING	FROM	DIST	PM NO
2	174°57'	PM FD	2.04	6627/16967



11 KING WILLIAM STREET, KENT TOWN
P.O. BOX 1000 KENT TOWN 5071
Tel (08) 8130 1666 Fax (08) 0362 0099 A.B.N. 53 007 753 980

REFERENCE A092219LT04(C)

KJD 08/05/2018



PLANNING AND DESIGN CODE EXTRACT

57 REPTON RD NORTH BRIGHTON SA 5048

Address:

Click to view a detailed interactive [SAILS](#) in SAILIS

To view a detailed interactive property map in SAPPA click on the map below



Property Zoning Details

Zone	Conservation Open Space
Overlay	Airport Building Heights (Regulated) (All structures over 45 metres) Building Near Airfields Coastal Areas Coastal Flooding Heritage Adjacency Prescribed Wells Area Regulated and Significant Tree
Local Variation (TNV)	Finished Ground and Floor Levels (Minimum finished ground level is 3.2m AHD; Minimum finished floor level is 3.45m AHD) Concept Plan (Concept Plan 4 - Minda Incorporated Brighton Campus - North Brighton)

Development Pathways

■ Conservation

1. Accepted Development

Means that the development type does not require planning consent (planning approval). Please ensure compliance with relevant land use and development controls in the Code.

- Brush fence
- Internal building work
- Partial demolition of a building or structure
- Protective tree netting structure
- Shade sail
- Solar photovoltaic panels (roof mounted)
- Water tank (above ground)

2. Code Assessed - Deemed to Satisfy

Means that the development type requires consent (planning approval). Please ensure compliance with relevant land use and development controls in the Code.

- Temporary accommodation in an area affected by bushfire

3. Code Assessed - Performance Assessed

Performance Assessed development types listed below are those for which the Code identifies relevant policies.

Additional development types that are not listed as Accepted, Deemed to Satisfy or Restricted default to a Performance assessed Pathway. Please contact your local council for more information.

- Advertisement
- Agricultural building
- Carport
- Demolition

- Dwelling
- Dwelling addition
- Farming
- Land division
- Outbuilding
- Retaining wall
- Tourist accommodation
- Tree-damaging activity

4. Impact Assessed - Restricted

Means that the development type requires approval. Classes of development that are classified as Restricted are listed in Table 4 of the relevant Zones.

■ Open Space

1. Accepted Development

Means that the development type does not require planning consent (planning approval). Please ensure compliance with relevant land use and development controls in the Code.

- Brush fence
- Internal building work
- Partial demolition of a building or structure
- Private bushfire shelter
- Protective tree netting structure
- Shade sail
- Solar photovoltaic panels (roof mounted)
- Verandah
- Water tank (above ground)

2. Code Assessed - Deemed to Satisfy

Means that the development type requires consent (planning approval). Please ensure compliance with relevant land use and development controls in the Code.

- Temporary accommodation in an area affected by bushfire

3. Code Assessed - Performance Assessed

Performance Assessed development types listed below are those for which the Code identifies relevant policies.

Additional development types that are not listed as Accepted, Deemed to Satisfy or Restricted default to a Performance assessed Pathway. Please contact your local council for more information.

- Advertisement
- Demolition
- Outbuilding
- Retaining wall
- Shop
- Tree-damaging activity
- Verandah

4. Impact Assessed - Restricted

Means that the development type requires approval. Classes of development that are classified as Restricted are listed in Table 4 of the relevant Zones.

Property Policy Information for above selection

Part 2 - Zones and Sub Zones

Conservation Zone

Assessment Provisions (AP)

Desired Outcome (DO)

Desired Outcome

DO 1	The conservation and enhancement of the natural environment and natural ecological processes for their ability to reduce the effects of climate change, for their historic, scientific, landscape, habitat, biodiversity, carbon storage and cultural values and provision of opportunities for the public to experience these through low-impact recreational and tourism development.
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Performance Outcomes (PO) and Deemed-to-Satisfy (DTS) Criteria / Designated Performance Feature (DPF)

Performance Outcome		Deemed-to-Satisfy Criteria / Designated Performance Feature	
Land Use			
PO 1.1	Small-scale, low-impact land uses that provide for the conservation and protection of the area, while allowing the public to experience these important environmental assets.	DTS/DPF 1.1	Development comprises one or more of the following: (a) Advertisement (b) Camp ground (c) Farming (d) Public toilet
PO 1.2	Development is primarily in the form of: (a) directional, identification and/or interpretative advertisements and/or advertising hoardings for conservation management and tourist information purposes (b) scientific monitoring structures or facilities (c) a small-scale facility associated with the interpretation and appreciation of natural and cultural heritage such as public amenities, camping grounds, remote shelters or huts (d) structures for conservation management purposes.	DTS/DPF 1.2	None are applicable.
PO 1.3	Farming activities occur on already cleared land and outside of areas containing native vegetation (including revegetated areas lost through bushfire), coastal dunes and wetlands of national importance.	DTS/DPF 1.3	None are applicable.
Land Division			
PO 2.1	Land division supports the management or improvement of the natural environment including avoiding: (a) further fragmentation of land that may reduce effective management of the environment (b) parcel arrangements that increase direct property access to waterfront areas.	DTS/DPF 2.1	Land division satisfies (a) and (b): (a) does not create any additional allotments (b) for a boundary realignment that does not result in any additional allotments with frontage or direct access to the coast and will satisfy one of the following: (i) is for the creation of a public road or a public reserve (ii) is to remove an anomaly in existing boundaries with respect to the location of existing buildings or structures (iii) is for the management of existing native vegetation (iv) the resultant allotments are not less than: In relation to DTS/DPF 2.1, in instances where: (c) more than one value is returned in the same field for DTS/DPF 2.1(b)(iv), refer to the <i>Minimum Site Area Technical and Numeric Variation</i> , layer in the SA planning database to determine the applicable value relevant to the site of the proposed development (d) no value is returned for DTS/DPF 2.1 (b)(iv) (i.e. there is a blank field), then none are applicable and the relevant development cannot be classified as deemed-to-satisfy.
Environmental Protection			
PO 3.1	Development avoids important habitat, nesting or breeding areas or areas that	DTS/DPF 3.1	None are applicable.

are important for the movement/migration patterns of fauna.	
PO 3.2 Development avoids seagrass, mangroves and saltmarshes for their biodiversity value and carbon storage potential.	DTS/DPF 3.2 None are applicable.
Built Form and Character	
PO 4.1 Development is sited and designed unobtrusively to minimise the visual impact on the natural environment by: (a) using low-reflective materials and finishes that blend with, and colours that complement, the surrounding landscape (b) being located below hilltops and ridgelines (c) being screened by existing vegetation.	DTS/DPF 4.1 None are applicable.
PO 4.2 Development is sited and designed to minimise impacts on the natural environment by: (a) containing construction and built form within a tightly defined site boundary (b) minimising the extent of earthworks.	DTS/DPF 4.2 None are applicable.
PO 4.3 Recreation or visitor facilities are located in publicly accessible areas in proximity to existing recreation trails to minimise impact on the natural environment.	DTS/DPF 4.3 None are applicable.
PO 4.4 Development does not obscure existing public views to landscape, river or seascape features and is not visibly prominent from key public vantage points, including public roads or car parking areas.	DTS/DPF 4.4 None are applicable.
Access and Car Parking	
PO 5.1 Vehicle access points are limited to minimise impact on the natural environment.	DTS/DPF 5.1 No more than one vehicle access point is provided to a site, landmark or lookout.
PO 5.2 Roads and vehicle access ways are located to minimise vegetation clearance and are constructed of permeable materials.	DTS/DPF 5.2 None are applicable.
PO 5.3 Roads are of a width and route to encourage low speeds and minimise impact on the natural environment.	DTS/DPF 5.3 None are applicable.
PO 5.4 Recreational trails and access ways are located to direct the public away from sensitive areas to minimise impact on the natural environment.	DTS/DPF 5.4 None are applicable.
PO 5.5 Recreational trails are raised or surfaced with permeable materials to minimise impact on the natural environment.	DTS/DPF 5.5 Pedestrian access ways/recreational trails are raised or constructed of permeable materials.
PO 5.6 Car parking areas are designed to minimise impact on the natural environment.	DTS/DPF 5.6 Car parking areas are: (a) constructed of permeable material (b) located on already legally cleared land (c) consolidated in one location.
Advertisement	

PO 6.1	DTS/DPF 6.1		
Advertisements are limited to those needed for direction, identification and/or interpretation of environmental or cultural values and recreational and tourism facilities.	Advertisements are for one or more of the following: (a) direction (b) identification and interpretation of environmental values (c) identification of recreational and tourism facilities.		
PO 6.2	DTS/DPF 6.2		
Advertisements are limited in number and size to minimise impact on the visual and natural environment.	The total combined area of advertisement(s) is not greater than 2m ² on any one site and no part is greater than 3m in height from natural ground level.		
Landscaping			
PO 7.1	DTS/DPF 7.1		
Screening and planting are provided to buildings and structures and comprise locally indigenous species to enhance the natural environment.	None are applicable.		
Hazard Risk Minimisation			
PO 8.1	DTS/DPF 8.1		
Habitable buildings are designed and sited to manage the risks of natural hazards on personal and public safety and property.	None are applicable.		
Concept Plans			
PO 9.1	DTS/DPF 9.1		
Development is compatible with the outcomes sought by any relevant Concept Plan contained within Part 12 - Concept Plans of the Planning and Design Code to support the orderly development of land through staging of development and provision of infrastructure.	<p>The site of the development is wholly located outside any relevant Concept Plan boundary. The following Concept Plans are relevant:</p> <table><tr><th>Description</th></tr><tr><td>Concept Plan 4 - Minda Incorporated Brighton Campus - North Brighton</td></tr></table> <p>In relation to DTS/DPF 9.1, in instances where:</p> <p>(a) one or more Concept Plan is returned, refer to Part 12 - Concept Plans in the Planning and Design Code to determine if a Concept Plan is relevant to the site of the proposed development. Note: multiple concept plans may be relevant.</p> <p>(b) in instances where 'no value' is returned, there is no relevant concept plan and DTS/DPF 9.1 is met.</p>	Description	Concept Plan 4 - Minda Incorporated Brighton Campus - North Brighton
Description			
Concept Plan 4 - Minda Incorporated Brighton Campus - North Brighton			

Table 5 - Procedural Matters (PM) - Notification

The following table identifies, pursuant to section 107(6) of the *Planning, Development and Infrastructure Act 2016*, classes of performance assessed development that are excluded from notification. The table also identifies any exemptions to the placement of notices when notification is required.

Interpretation

Notification tables exclude the classes of development listed in Column A from notification provided that they do not fall within a corresponding exclusion prescribed in Column B.

Where a development or an element of a development falls within more than one class of development listed in Column A, it will be excluded from notification if it is excluded (in its entirety) under any of those classes of development. It need not be excluded under all applicable classes of development.

Where a development involves multiple performance assessed elements, all performance assessed elements will require notification (regardless of whether one or more elements are excluded in the applicable notification table) unless every performance assessed element of the application is excluded in the applicable notification table, in which case the application will not require notification.

Class of Development (Column A)	Exceptions (Column B)
1. Development which, in the opinion of the relevant authority, is of a minor nature only and will not unreasonably impact on the owners or occupiers of land in the locality of the site of the development.	None specified.

2. Any development involving any of the following (or of any combination of any of the following):
- (a) advertisement
 - (b) air handling unit, air conditioning system or exhaust fan
 - (c) agricultural building
 - (d) building work on railway land
 - (e) camp ground
 - (f) carport
 - (g) demolition
 - (h) dwelling alterations or additions
 - (i) farming
 - (j) fence
 - (k) internal building works
 - (l) navigation structures, boat berth, pier, pontoon or similar structure (or any combination thereof)
 - (m) outbuilding
 - (n) private bushfire shelter
 - (o) protective tree netting structure
 - (p) public toilets
 - (q) replacement building
 - (r) retaining wall
 - (s) shade sail
 - (t) solar photovoltaic panels (roof mounted)
 - (u) temporary accommodation in an area affected by bushfire
 - (v) tree damaging activity
 - (w) water tank.

None specified.

3. Demolition.

Except any of the following:

- 1. the demolition of a State or Local Heritage Place
- 2. the demolition of a building (except an ancillary building) in a Historic Area Overlay.

Placement of Notices - Exemptions for Performance Assessed Development

None specified.

Placement of Notices - Exemptions for Restricted Development

None specified.

Open Space Zone

Assessment Provisions (AP)

Desired Outcome (DO)

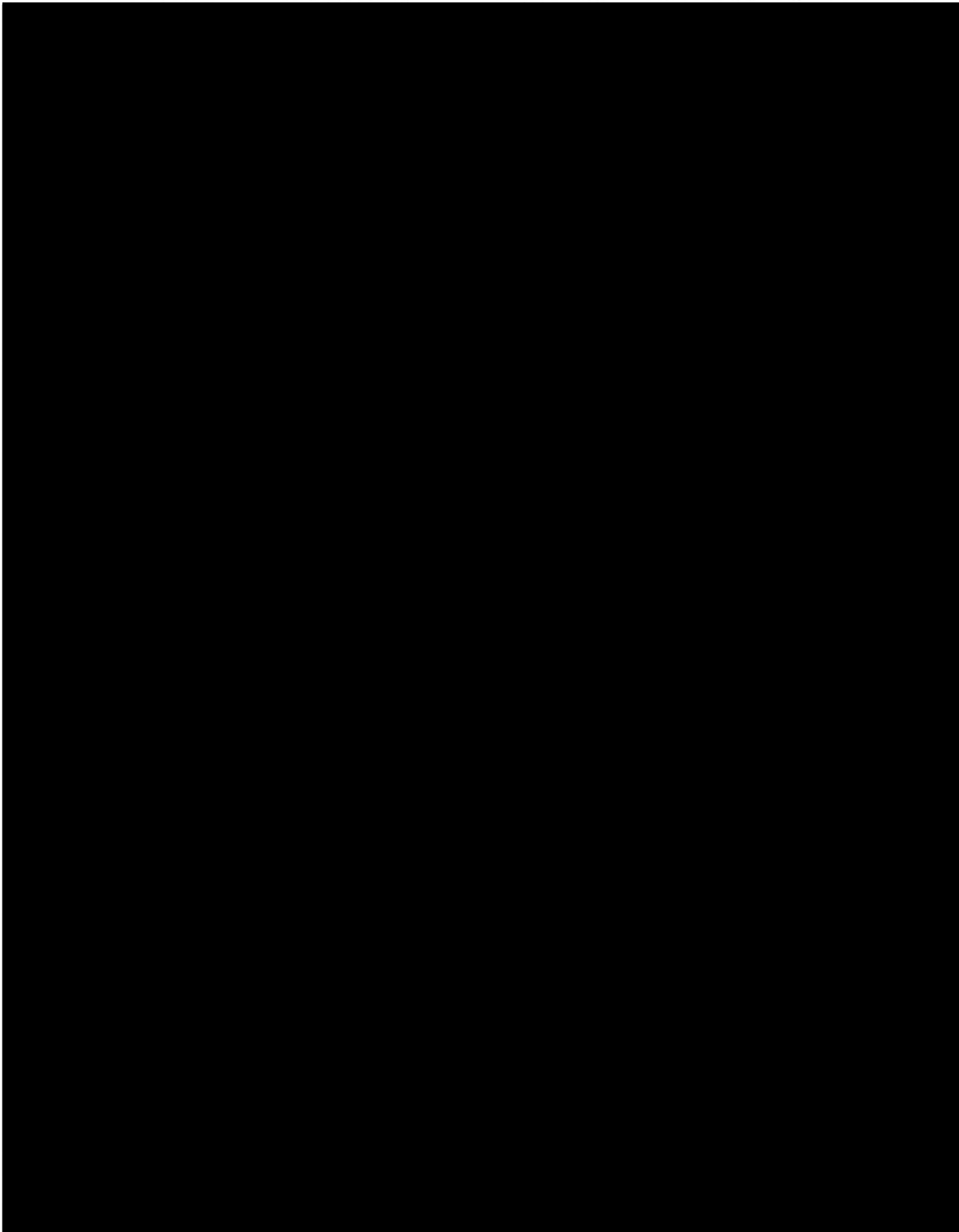
Desired Outcome	
DO1	Areas of natural and landscaped open space provide for biodiversity, tree canopy cover, urban cooling and visual relief to the built environment for the health and enjoyment of the community.

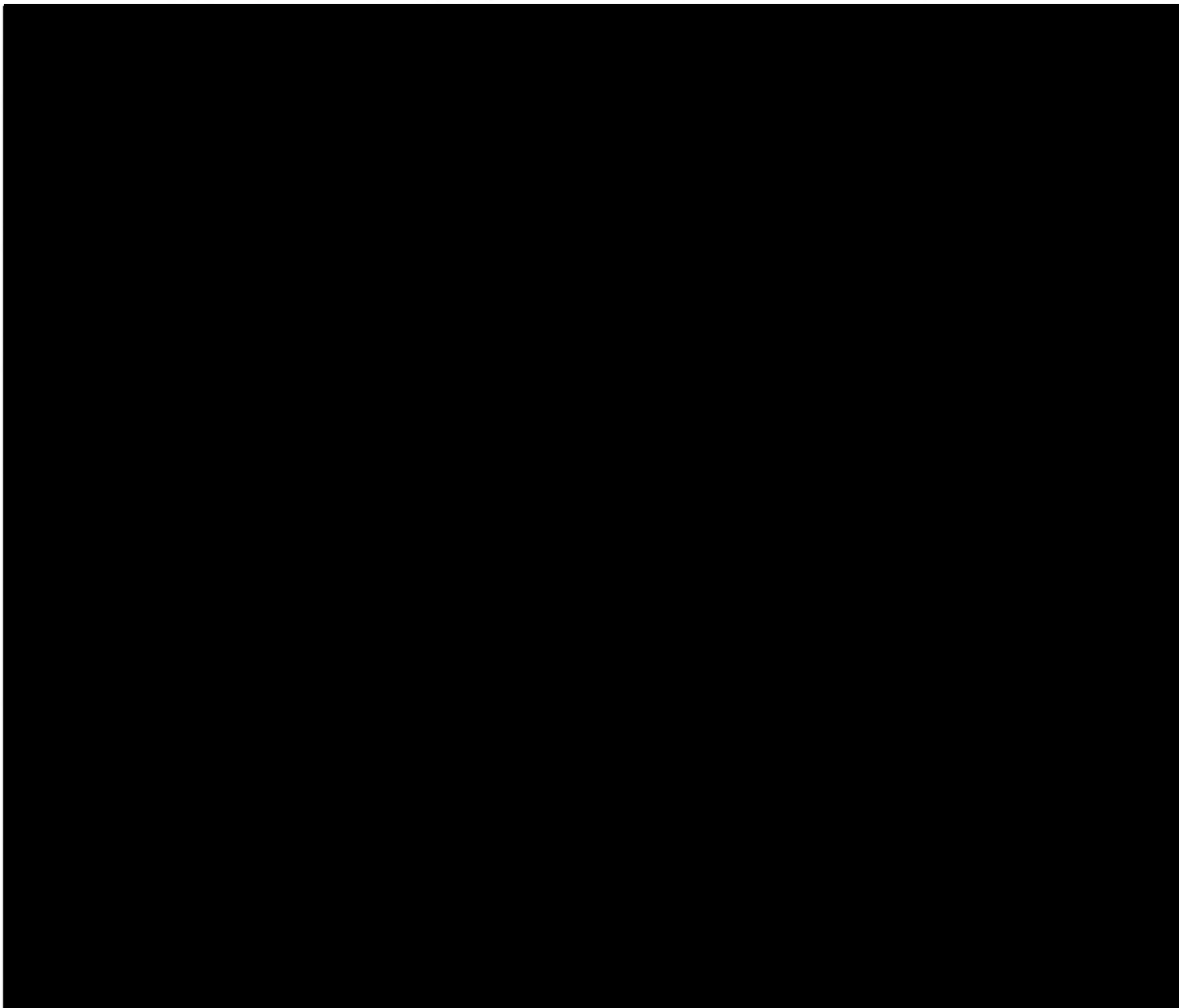
Performance Outcomes (PO) and Deemed-to-Satisfy (DTS) Criteria / Designated Performance Feature (DPF)

Performance Outcome	Deemed-to-Satisfy Criteria / Designated Performance Feature
Land Use and Intensity	
<p>PO 1.1</p> <p>Development is associated with or ancillary to the provision of unstructured outdoor passive and active recreation facilities.</p>	<p>DTS/DPF 1.1</p> <p>Development comprises one or more of the following:</p> <ul style="list-style-type: none"> (a) Open space (b) Outdoor sports courts (c) Recreation area (d) Sporting ovals and fields
<p>PO 1.2</p> <p>Buildings are limited in number and size to provide a natural, landscaped setting.</p>	<p>DTS/DPF 1.2</p> <p>None are applicable.</p>
<p>PO 1.3</p> <p>Shops including restaurants are of a scale that is subordinate to the principal open space and recreation use of the land.</p>	<p>DTS/DPF 1.3</p> <p>Shop gross leasable floor area does not exceed 50m².</p>
<p>PO 1.4</p> <p>Offices are of a scale that is subordinate to the principal open space use of the land.</p>	<p>DTS/DPF 1.4</p> <p>Office gross leasable floor area does not exceed 80m².</p>
Built Form and Character	
<p>PO 2.1</p> <p>Development is designed and sited to be unobtrusive and not spoil the open space character or interrupt views of natural or landscape features.</p>	<p>DTS/DPF 2.1</p> <p>None are applicable.</p>
<p>PO 2.2</p> <p>Outbuildings are of a scale that mitigates visual impacts of buildings on natural or landscape features.</p>	<p>DTS/DPF 2.2</p> <p>Outbuildings have a:</p> <ul style="list-style-type: none"> (a) floor area that does not exceed 80m² (b) wall height that does not exceed 3m (c) building height that does not exceed 5m
<p>PO 2.3</p> <p>Development is sited and designed to be compatible with the conservation and enhancement of the natural environment.</p>	<p>DTS/DPF 2.3</p> <p>None are applicable.</p>
Land Division	
<p>PO 3.1</p> <p>Land division supports the provision of public open space.</p>	<p>DTS/DPF 3.1</p> <p>Land division is for the purposes of:</p> <ul style="list-style-type: none"> (a) the creation of a public road or a public reserve or (b) a minor adjustment of allotment boundaries to: <ul style="list-style-type: none"> (i) remove an anomaly in existing boundaries with respect to the location of existing buildings or structures or (ii) result in the preservation of existing stands of native vegetation, habitat or biodiversity
Concept Plans	
<p>PO 4.1</p> <p>Development is compatible with the outcomes sought by any relevant Concept Plan contained within Part 12 - Concept Plans of the Planning and Design Code to support the orderly development of land through staging of development and provision of infrastructure.</p>	<p>DTS/DPF 4.1</p> <p>The site of the development is wholly located outside any relevant Concept Plan boundary. The following Concept Plans are relevant:</p> <p>In relation to DTS/DPF 4.1, in instances where:</p> <ul style="list-style-type: none"> (a) one or more Concept Plan is returned, refer to Part 12 - Concept Plans in the Planning and Design Code to determine if a Concept Plan is relevant to the site of the proposed development. Note: multiple



PHOTOGRAPHS







LICENCE

CLUB LICENCE

57210525

Liquor Licensing Act 1997

Premises Name	Somerton Surf Life Saving Club
Licence Status	Current
Premises Address	Cnr Repton Road & The Esplanade, SOMERTON PARK SA 5044
Licensee	Somerton Surf Life Saving Club Inc

Premises capacity

Capacity:	345
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Authorised hours for the sale of liquor

	Consumption on premises
Monday	8:00 am to Midnight
Tuesday	8:00 am to Midnight
Wednesday	8:00 am to Midnight
Thursday	8:00 am to Midnight
Friday	8:00 am to Midnight
Saturday	8:00 am to Midnight
Sunday	5:00 am to Midnight

Trading Authorisations and Exemptions

Trading Authorisations

1. Sale of liquor for consumption on the licensed premises authorised
2. Profit sharing agreement approved

This licence authorises the sale and supply of liquor in accordance with the Liquor Licensing Act 1997, the terms and conditions of this licence, and the Commissioner's Codes of Practice.

It is the licensee's responsibility to determine whether any conditions imposed by local council relating to the use of the premises or carrying on the business under the licence also apply.



SUB-LEASE

CITY OF HOLDFAST BAY

(Headlessor)

and

SOMERTON SURF LIFE SAVING CLUB INCORPORATED

(Lessor)

and

GAMBELL & SUTTON PTY LTD

(Lessee)

SUBLEASE

Corner of Repton Road & Esplanade, Somerton Park SA

THIS AGREEMENT is made the _____ day of _____ 2022

BETWEEN: **SOMERTON SURF LIFE SAVING CLUB INCORPORATED** ABN 85 241 889 464 of corner of Repton Road & Esplanade, Somerton Park SA 5044 (**Lessor**)

AND: **GAMBELL & SUTTON PTY LTD** ACN 637 647 940 of Corner Repton Road, 2 Esplanade, Somerton Park SA 5044 (**Lessee**)

BACKGROUND

- A. The Headlessor is the registered proprietor of the Land.
- B. The Headlessor granted to the Lessor a lease over the Premises on the terms and conditions set out in the Headlease.
- C. The Lessor has agreed to grant and the Lessee has agreed to accept a sublease of the Premises upon the terms and conditions set out in the Headlease except insofar as those terms and conditions are altered or modified by this document.
- D. The Headlessor has consented to the grant of this document on the terms of this document.
- E. The Sublessee has carefully inspected the Premises and is satisfied that the Premises is in good condition and fit for the Permitted Purpose.

AGREEMENT:

PART 1 - INTERPRETATION

1. Interpreting this document

- 1.1 The things stated in the Background on page 1 form part of this document.
- 1.2 The following expressions have special meanings:
 - (a) **Act** means the Retail and Commercial Leases Act 1995.
 - (b) **Accounting Period** means:
 - (i) the initial period from the Commencement Date up to and including 30 June next (which unless this document commences on 1 July will be a period of less than 12 months);
 - (ii) each consecutive period of 12 months commencing 1 July in any year and expiring at midnight on 30 June in the next following year; and
 - (iii) a final period commencing on 1 July and expiring at midnight on the last day of this document (which, unless this document expires on 30 June, will be a period of less than 12 months).
 - (c) **Agreed Consideration** means the Rent 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 Lessor under this document (other than tax payable under clause 19).
 - (d) **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.

- (e) **Building Services** includes all services (including gas, electricity, water, sewerage, communications, fire control, air-conditioning, plumbing and telephone and all plant, equipment, pipes, wires and cables in connection with them as applicable) to or of the Building or any premises in it or on the Land supplied by any authority, the Headlessor or any other person the Headlessor authorises.
- (f) **Commencement Date** means the commencement date described in Item 4.
- (g) **Common Areas** means all areas of the Land or Building that are not leased or tenanted and that are for common use by tenants and lessees of the Building or the Land and their invitees and customers including driveways, car parks and walkways.
- (h) **CPI** means the consumer price index published by the Australian Bureau of Statistics for All Groups (Adelaide) or the index that replaces it under clause 4.5.
- (i) **Current CPI** means the CPI number for the quarter ending immediately before the relevant CPI Review Date.
- (j) **Default Rate** means a rate of two per centum (2%) 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.
- (k) **Fixed Amount** means a fixed increase of the Rent on a Review Date.
- (l) **GST** has the same meaning as given to that term in the GST Legislation.
- (m) **GST Legislation** means the A New Tax System (Goods and Services Tax) Act 1999 and any similar legislation.
- (n) **GST Rate** means 10% or such other percentage equal to the rate of GST imposed from time to time under GST Legislation.
- (o) **Headlease** means a lease between the Headlessor (as lessor) and the Lessor (as lessee) in respect of a portion of the Land.
- (p) **Headlessor** means the City of Holdfast Bay (ABN 62 551 270 492) of PO Box 19, Brighton SA 5048.
- (q) **Initial Term** means the initial term of this document commencing on the Commencement Date for the period described in Item 3.
- (r) **Land** means the land described in Item 2 and includes any part of the Land.
- (s) **Legislation** means any relevant Statute or Act of Parliament (whether State or Federal) and any regulation or by-law including by-laws issued by any Council or local government body or authority.
- (t) **Lessee** means the party described as "Lessee" on page 1 of this document and where the context permits includes the employees, contractors, customers, agents and other invitees of the Lessee.

- (u) **Lessee's Business** means the business operated by the Lessee from the Premises.
- (v) **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.
- (w) **Lessee's Share** means the proportion the lettable floor area of the Premises bears from time to time to the total lettable floor area of the Land as measured in accordance with the method of measurement recommended for such Premises by the guidelines issued by the Institute current as at the Commencement Date or such other Institute method of measurement as the Lessor notifies the Lessee.
- (x) **Lessor** means the party described as "Lessor" on page 1 of this document and where the context permits includes the employees, contractors, customers, agents and other invitees of the Lessor.
- (y) **Outgoings** means the total of all amounts paid or payable by the Headlessor and the Lessor in connection with the ownership, management, administration and operation of the Premises, the Land and/or Building including:
 - (i) the amount of any excess or deductible not paid or excluded under any insurance policy taken out by the Headlessor or the Lessor;
 - (ii) all costs of the Lessor or the Lessor in connection with electricity, gas and any other services and utilities supplied to or used for the Premises;
 - (iii) all costs of the Lessor or the Lessor in connection with lighting, heating and air-conditioning the Premises and Common Areas and with providing supplies and consumables for toilets, washrooms and other facilities provided to the Premises and in the Common Areas.
- (z) **Payment Date** means the Commencement Date and the first day of each month during the Term.
- (aa) **Permitted Use** means the use described in Item 7.
- (bb) **Premises** means the premises described in Item 1.
- (cc) **Rates and Taxes** means all present and future rates, charges, levies, assessments, duty and charges of any Government (whether State, Federal or Local), Statutory Authority or other department or authority having the power to raise or levy any such amounts including water and sewer charges, council rates, emergency services levy and land tax (on a single holding basis).
- (dd) **Renewal Term** means the term (if any) of renewal or extension granted under this document.
- (ee) **Rent** means the rent described in Item 5 as reviewed in accordance with the provisions of this document.
- (ff) **Review Date** means each date in Item 6.
- (gg) **Review Method** means the relevant method of Rent review in Item 6 for any Review Date.
- (hh) **Statutory Authority** means any authority created by or under any relevant Legislation.

- (ii) **Statutory Requirements** means all relevant and applicable Legislation and all lawful conditions, requirements, notices, orders and directives issued or applicable under any such Legislation.
 - (jj) **Term** means the term described in Item 4.
 - (kk) **Valuer** means a qualified valuer appointed to make a determination or assessment under this document and:
 - (i) who shall be appointed as agreed by the Lessor or the Lessee or failing agreement within fourteen (14) days of either notifying the other of the requirement for such appointment at the request of either the Lessor or Lessee by the person holding or acting in the position of President of the Institute;
 - (ii) who shall have practised as a valuer with a minimum of five (5) years relevant experience;
 - (iii) who is licensed to practice as a valuer of the kind of premises whose review is required; and
 - (iv) who will act as an expert and not as an arbitrator.
 - (ll) **Yearly Amounts** means the aggregate of the Rent and any other moneys payable by the Lessee under this document during the Term.
- 1.3 headings do not affect interpretation;
 - 1.4 singular includes plural and plural includes singular;
 - 1.5 words of one gender include any gender;
 - 1.6 a reference to a party includes its executors, administrators, successors and permitted assigns;
 - 1.7 a reference to a person includes a partnership, corporation, association, government body and any other entity;
 - 1.8 a reference to this document includes any schedules and annexures to this document;
 - 1.9 a reference to any document (including this document) is to that document as varied, novated, ratified or replaced from time to time;
 - 1.10 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;
 - 1.11 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;
 - 1.12 a reference to legislation includes any amendment to it, any legislation substituted for it, and any subordinate legislation made under it;
 - 1.13 a provision is not construed against a party only because that party drafted it;
 - 1.14 an unenforceable provision or part of a provision may be severed, and the remainder of this document continues in force;

- 1.15 the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions;
- 1.16 an expression defined in the Corporations Act 2001 (Cth) has the meaning given by that act at the date of this document;
- 1.17 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 document unless they are expressly or impliedly excluded or modified; and
- 1.18 the special conditions in Item 9 prevail over the terms in the body of this document to the extent of any inconsistency and any failure to comply with the special conditions will be deemed a breach of an essential term of this document.

2. **Retail and Commercial Leases Act 1995**

If the Act applies to this document, then this document will be read and interpreted subject to the provisions of the Act and to the extent to which there is any inconsistency with the provisions of the Act, those provisions of the Act will override the terms of this document.

3. **Grant of Sublease**

The Lessor grants and the Lessee accepts a Sublease of the Premises for the Term as set out in this document.

4. **Rent**

4.1 **Payment of Rent**

The Lessee must pay the Rent by equal monthly 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.

4.3 **Rent Reviews**

The Rent will be reviewed during the Term for each Review Date in accordance with the following:

4.4 **CPI Review**

Where the Rent is to be reviewed to a CPI Review, the Rent on and from that Review Date is calculated as follows:

$$R_2 = R_1 \times \frac{(\text{Current CPI})}{(\text{Previous CPI})}$$

Where:

R_2 is the Rent payable immediately after the Review Date; and

R_1 is the Rent payable immediately before the Review Date (disregarding any abatements, incentives or reductions).

4.5 Change to CPI Index

If the CPI is no longer published, either party may ask the President of the Institute to nominate an index which reflects the rate of price change in the area and group for the CPI and "CPI" then means that index. The parties must each pay one half of the President's costs for nominating an index.

4.6 Fixed Rent Amount

Where the Rent is to be reviewed by a Fixed Amount, the Rent on and from that Review Date is increased to the amount stated in Item 6.

4.7 Rent Pending Determination

- (a) The Rent may be reviewed at any time for a Review Date even if the review is instituted after a Review Date.
- (b) If the Rent to apply on and from a Review Date has not been agreed on or determined by that Review Date, the Lessee must continue to pay instalments of Rent at the rate before the relevant Review Date until the Rent is determined.

5. Adjustment Once Rent Determined

Once the Rent to apply on and from a Review Date is determined, the Lessee will pay any shortfall, and the Lessor will allow any adjustment for overpayment at the next Payment Date.

6. Other review

The Lessor and Lessee may negotiate and agree a Rent to apply from a Review Date without following this clause.

7. Rates and Taxes and Outgoings

7.1 Liability for Rates and Taxes

The Lessee is not required to pay Rates, Taxes or Outgoings in respect of the Premises, except to the extent any such charges are imposed by the Lessee's specific use of the Premises.

7.2 Liability for Outgoings and other costs

- (a) The Lessee must pay or reimburse the Lessor:
 - (i) subject to clause 7.3, all Outgoings paid or payable by the Lessor in respect of the Premises, the Building or the Land;
 - (ii) one half of all costs of the Lessor in connection with inspecting and servicing the grease trap;
 - (iii) one half of all costs of the Lessor in connection with the collection and removal of waste from the Building;
 - (iv) one half of all costs of the Lessor incurred in connection with the supply and consumption of gas to the Building; and

- (v) all costs in connection with any patrol ordered to attend the Building by the alarm monitoring company from any act or failure to act by the Lessee.
- (b) The amounts in clause 7.2 must be adjusted between the Lessor and the Lessee as at the Commencement Date and the end or termination date of this document.

7.3 Lessee's Share

- (a) If any of the Outgoings are not separately assessed or charged in respect of the Premises then the Lessee must pay the Lessee's Share of any such Outgoings assessed or charged in respect of the Premises, the Building or the Land.

7.4 Payments, Estimates and Adjustments

- (a) The Lessee must pay or reimburse the Lessor all Outgoings in accordance with clauses 7.2 to 7.3 as and when requested by the Lessor.
- (b) As soon as practicable following a request from the Lessee, the Lessor will provide copies of any statements or invoices it has received for the Rates and Taxes or Outgoings from the Headlessor.

7.5 Power and Other Utilities

- (a) Without limiting this clause 7.2, the Lessee will comply in all respects with the *Electricity (General) Regulations 2012* (SA) and any other applicable electricity laws.

7.6 Separate Air-conditioning Plant

- (a) If the Premises are served by separate air-conditioning plant or equipment the Lessee must, at its own cost, ensure that that air-conditioning plant or equipment is properly and regularly serviced and maintained and if the Lessor gives any instructions or directions with regard to the service and maintenance of that air-conditioning plant or equipment, the Lessee must, at its own cost, ensure that the air-conditioning plant and equipment is serviced and maintained in accordance with those instructions or directions.
- (b) If the Lessor chooses to arrange for the service, maintenance and repair of the air-conditioning plant or equipment (and notifies the Lessee accordingly) then the Lessee must permit the Lessor, and any person authorised by it for that purpose, to enter the Premises and carry out such service, maintenance and repair at all reasonable times. The Lessee must pay or reimburse to the Lessor all costs and expenses incurred in that regard which the Lessor may recover from the Lessee as a debt due and payable on demand.
- (c) The Lessee must pay or reimburse to the Lessor the cost of all power consumed by such air-conditioning plant or equipment and the Lessor may recover any such amounts as a debt due.

8. Use of Premises

8.1 Permitted Use

- (a) The Lessee must use the Premises only for the Permitted Use and must not use or allow the Premises to be used for:

- (b) residential purposes; or
- (c) any other use (without the Lessor's and the Headlessor's consent).

8.2 Offensive Activities

- (a) The Lessee must not carry on any offensive or dangerous activities on or from the Premises or create a nuisance or disturbance either:
 - (b) for the Lessor; or
 - (c) for the owners or occupiers of any adjoining property; and
- (d) must ensure at all times that activities conducted on or from the Premises will not bring any discredit upon the Lessor.

8.3 Use of Facilities

- (a) The Lessee must ensure that the Building Services and all other facilities provided by the Lessor or the Headlessor within the Building or the Premises are used carefully and responsibly for their intended purpose and in accordance with any instructions or directions that may be given by the Lessor or Headlessor from time to time.
- (b) The Lessee is responsible to repair or correct any damage or malfunction which results from any misuse or abuse of the Building Services and all other facilities by the Lessee.

8.4 Statutory Requirements

- (a) The Lessee must comply with all Statutory Requirements (including any obligations under the *Work Health and Safety Act 2012 (SA)*) relating to:
 - (b) the Lessee's use and occupation of the Premises;
 - (c) the nature of the business and Permitted Use conducted on the Premises by the Lessee;
 - (d) the number and sex of staff or others employed to work in the Premises; or
 - (e) any deliberate or negligent act or omission of the Lessee;
 - (f) including any requirements for building works or modifications to the Premises (whether structural or otherwise).

8.5 Signs

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

- (a) are approved (in writing) by the Lessor and the Headlessor; and
- (b) comply with any relevant Statutory Requirements.

8.6 Dangerous Equipment and Installations

- (a) The Lessee may only install or use within the Premises equipment which is reasonably necessary for, and which is normally used in connection with, the

Lessee's Business in accordance with the Permitted Use and will not install or bring onto the Premises:

- (b) any electrical, gas powered or other machinery or equipment which is not designed for use in such premises and which may pose a danger, risk or hazard to the Premises, the Building or any people;
- (c) any chemicals or other dangerous substances which by their nature, or their volume, may pose a danger, risk or hazard to the Premises, the Building or any people; or
- (d) any heavy equipment or items which may damage the Premises or Building.

8.7 Fire Precautions

- (a) The Lessee must:
 - (i) comply with all requirements and directives of the Lessor or Headlessor with regard to fire safety systems and procedures including fire evacuation drills and other procedures; and
 - (ii) 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 result of:
 - (iii) the Lessee's use or occupation of the Premises;
 - (iv) the nature of the business conducted on the Premises by the Lessee;
 - (v) the number and sex of the staff or others employed to work on the Premises;
 or
 - (vi) any deliberate or negligent act or omission of the Lessee.

8.8 Notice of defect

- (a) The Lessee must:
 - (i) give the Lessor prompt notice of any circumstance or event which the Lessee should reasonably be aware might cause danger, risk or hazard to the Premises or the Building or to any person in the Premises or the Building; and
 - (ii) if required by the Lessor, promptly rectify any defect or want of repair to make the Premises safe from any danger, risk or hazard.

8.9 Security

The Lessee must comply with any reasonable directions of the Lessor or Headlessor in relation to security arrangements for the Premises or Building.

8.10 Common Areas Access

Subject to the terms of this document, the Lessee is entitled to access and use of the Common Areas in common with other tenants and users of the Building and the Land.

8.11 No Warranty

The Lessor makes no warranty or representation regarding the suitability of the Premises (structural or otherwise) for the Permitted Use or any other purpose and the Lessee occupies the Premises at its risk.

9. Insurance

9.1 Lessee must insure

- (a) The Lessee must keep current during the Term (in connection with the Premises and the Lessee's Equipment):
- (b) public risk insurance for at least the amount in Item 8 (or any other amount the Lessor reasonably requires) for each claim and unlimited in the annual aggregate;
- (c) plate glass insurance against usual risks;
- (d) all insurance in respect of the Lessee's Equipment for its full replacement value; and
- (e) other insurances required by any Statutory Requirement or which the Lessor reasonably requires for at least the amounts the Lessor reasonably requires.

9.2 Requirements for policies

Each policy the Lessee takes out under this clause 9 must:

- (a) be with an insurer and on terms reasonably approved by the Lessor;
- (b) be in the name of the Lessee and note the interest of the Lessor and any other person the Lessor requires;
- (c) have no limit on the number of claims that can be made under it;
- (d) cover events occurring during the policy's currency regardless of when claims are made; and
- (e) note that despite any similar policies of the Lessor, the Lessee's policies will be primary policies.

9.3 Evidence of Insurance

- (a) On or before the Commencement Date, the Lessee must give the Lessor certificates evidencing the currency of the policies the Lessee has taken out under this clause 9. During the Term the Lessee must:
- (b) pay each premium before it is due for payment;
- (c) give the Lessor certificates of currency each year when the policies are renewed and at other times the Lessor requests;
- (d) not allow any insurance policy to lapse or vary without the Lessor's consent; and
- (e) notify the Lessor immediately if a policy is cancelled or if an event occurs which could prejudice or give rise to a claim under a policy.

9.4 Insurance affected

- (a) The Lessee must not do anything which may:

- (i) prejudice any insurance of the Premises or the Building; or
 - (ii) increase the premium for that insurance.
- (b) If the Lessee does anything (with or without the Lessor's consent) that increases the premium of any insurance the Lessor or Headlessor has in connection with the Premises or the Building, the Lessee or Headlessor (as the case may be) must pay the amount of that increase to the Lessor on demand.

10. Repair and Maintenance

10.1 Repair

- (a) The Lessee must keep, maintain and repair the Premises, the Lessee's Equipment and any Building Services situated within the Premises and which service the Premises in the same repair, order and condition as at the Commencement Date, which obligations expressly include the regular service and maintenance of fridges, coolrooms and cooking appliances (fair wear and tear excepted).
- (b) The Lessee must ensure that all electrical appliances are tagged and tested in compliance with relevant Statutory Requirements.
- (c) If the Lessor requires the Lessee to do so, the Lessee must promptly repair damage to the Building caused or contributed to by the act, omission, negligence or default of the Lessee.

10.2 Alterations by Lessee

The Lessee must not carry out any alterations or additions to the Premises without the Lessor's and the Headlessor's consent.

10.3 Painting

- (a) The Lessee must, at its cost, paint all parts of the Premises which have previously been painted at such times during the Term the Lessor or Headlessor reasonably requires by notice in writing to the Lessee.:
- (b) The Lessee must carry out the painting in a proper and professional manner, in colours reasonably approved by the Lessor or Headlessor.

10.4 Cleaning

The Lessee must keep the Premises clean and tidy and free from dirt and rubbish, and specifically, the Lessee will ensure that:

- (a) the filters for the extractor fan are cleaned on a regular basis;
- (b) the kitchen and western balcony within the Premises are kept clean and tidy at all times and comply with the standards required and expected by the Food Act 2001.

10.5 Structural Work

Despite any other provision of clauses 10.1 or 10.2, the Lessee is not required to carry out any structural work to the Premises or the Building unless that work is required as a result of:

- (a) the Lessee's use or occupation of the Premises;

- (b) the nature of the business conducted on the Premises by the Lessee;
- (c) the number and sex of staff or others employed to work in the Premises; or
- (d) any deliberate or negligent act or omission of the Lessee.

11. Transferring, Subletting and Charging

11.1 Transfer

The Lessee must not transfer its interest in this document without the Lessor's and the Headlessor's prior written consent.

11.2 Subletting, licensing and hiring out

The Lessee must not sublet, license, hire out or otherwise part with possession of any part of the Premises without the Lessor's and the Headlessor's consent.

11.3 Charging

- (a) The Lessee must not mortgage, charge, encumber or grant a security interest over or in respect of the Lessee's interest in this document or the Lessee's Equipment without the Lessor's and the Headlessor's consent.
- (b) If the Lessor and the Headlessor consent to a mortgage, charge, encumbrance or security interest on the Lessee's interest in this document or the Lessee's Equipment then the Lessee must enter into a deed in a form required by the Lessor and the Headlessor that ensures the mortgage, charge, encumbrance or security interest is subject to the rights of the Lessor and the Headlessor under this document.

11.4 Deemed Assignment

If the Lessee is a corporation (not being a company with its shares listed on any Stock Exchange in Australia) or an association, any change in the beneficial ownership of 20% or more of the voting shares in the corporation or any change in the effective control of the corporation or association, will be deemed to be an assignment of the Premises requiring the consent of Lessor under this document.

11.5 Costs

The Lessee must pay all costs reasonably incurred by the Headlessor and Lessor (including the costs of any consultant or any legal fees) in relation to any dealing, including in considering whether or not to grant any consent to a request by the Lessee under this clause 11.

11.6 No Release

Where the Headlessor or Lessor grants consent to an assignment, the Lessee (i.e. the party assigning the Sublease or rights under the Sublease) will not be released or discharged from the current and future obligations and liabilities under this document.

11.7 Superior Interest

- (a) In the event of a person or persons other than the Lessor becoming entitled to receive the Rent and other moneys and the benefit of the performance of the Lessee's obligations under this document, the Lessee agrees that such person will

have the benefit of all covenants and agreements on the part of the Lessee to be performed and at the cost of the Lessor will enter into such covenant with such other person in that regard as the Lessor may reasonably require.

- (b) The Lessee must permit any person having an estate or interest in the whole or any part of the Premises or the Land superior to or concurrent with the Landlord to exercise the Landlord's or such other person's powers to enter and view the Premises and carry out repairs, renovations, maintenance and other work on or to the Premises and otherwise generally to perform their lawful rights or obligations in regard to the Premises.

12. Lessor's obligations and rights

12.1 Quiet Enjoyment

Subject to the Lessor's rights and to the Lessee complying with the Lessee's obligations under this document, the Lessee may occupy the Premises during the Term without interference from the Lessor or anyone claiming through the Lessor.

12.2 Right to enter

The Lessor and the Headlessor may (except in the case of emergency when no notice will be required) enter the Premises after giving the Lessee at least 24 hours written notice:

- (a) to remove any items situated on the Premises which do not form part of the Lessee's Equipment and undertake any ancillary work associated with this;
- (b) to ascertain the Lessee's compliance with the requirements of this document;
- (c) to see the state of repair of the Premises;
- (d) to do repairs to the Premises or other works that cannot reasonably be done unless the Lessor enters the Premises;
- (e) to do anything the Lessor or Headlessor must or may do under this document or must do under any law or to satisfy the requirements of any authority;
- (f) to show prospective lessees through the Premises during the last six (6) months of the Term; and
- (g) to show prospective purchasers through the Premises.

12.3 Emergencies

In an emergency the Lessor or the Headlessor may:

- (a) close the Premises; and
- (b) prevent the Lessee (and its agents) from entering the Premises.

12.4 Headlessor may sell

If the Headlessor sells the Land and another person becomes the Headlessor, the Headlessor is released from its obligations under this document with effect from the date it is no longer Headlessor.

12.5 Right to rectify

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

13. Damage or destruction

13.1 Termination for destruction or damage

- (a) If the Premises are destroyed or are damaged so that they are unfit for the Lessee's use then, within three months after the damage or destruction occurs, the Lessor must give the Lessee either:
 - (b) a notice terminating this document (on a date at least one month after the Lessor gives notice); or
 - (c) a notice advising the Lessee that the Lessor or Headlessor 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**).
 - (d) If the Lessor gives an Intention to Repair Notice but does not carry out the repairs within a reasonable time, the Lessee may give notice to the Lessor that the Lessee intends to end this document if the Lessor 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**).
 - (e) If the Lessor does not give a notice under this subclause or does not take the action required by the Intention to Terminate Notice, the Lessee may end this document by giving the Lessor not less than one month's notice.

13.2 Reduction or abatement of Rent

- (i) While the Premises are unfit or inaccessible, the Yearly Amounts are reduced unless:
 - (ii) the Premises are unfit or inaccessible; or
 - (iii) an insurer refuses to pay a claim;
 - (iv) as a result of a deliberate or negligent act or omission of the Lessee.
- (b) The level of the reduction (if any) depends on the nature and extent of the damage.
- (c) If the level of the reduction (if any) cannot be agreed it must be determined by a Valuer.

13.3 No prejudice

This clause does not prejudice the rights of the Lessor to recover loss and damage from the Lessee if and to the extent that the damage to the Premises is caused or contributed to by any deliberate or negligent act or omission by the Lessee.

14. RENEWAL

14.1 Right of Renewal

If a right of renewal has been granted to the Lessee as described in Item 4 and the Lessee wishes to exercise that right of renewal, then the Lessee must serve a written notice on the Lessor not less than four (4) months and not more than seven (7) months

prior to the expiry of the Initial Term stating its desire to renew this document for the period of the renewal specified in Item 4 (**Renewal Term**). If such notice is given then the Lessor will be obliged to renew this document for the Renewal Term on the same terms and conditions as are contained in this document except for the exclusion of this clause 14.1 commencing immediately after the Initial Term expires.

14.2 No Renewal Entitlement

The Lessee will not be entitled to a right of renewal pursuant to clause 14.1 if:

- (a) there is an unremedied breach of this document at the time of giving the notice to exercise the right or renewal ("notice"); or
- (b) the Lessee is in or commits a breach under this document after giving that notice but before commencement of the Renewal Term;
- (c) the Lessee has been given more than three notices to remedy breaches of the Sublease by the Lessor during the Initial Term; or
- (d) the Headlease has expired, terminated or has been otherwise determined.

15. RIGHTS AND OBLIGATIONS ON EXPIRY

15.1 Expiry

This document will come to an end at midnight on the last day of the term of this document unless it is lawfully terminated earlier, in which case it will come to an end when such earlier termination is effected.

15.2 Handover of Possession

- (a) Before this document comes to an end, the Lessee will:
 - (i) remove all of the Lessee's Equipment and repair any damage caused by such removal;
 - (ii) if required by the Lessor, remove and reinstate any alterations or additions made by the Lessee; and
 - (iii) carry out and complete any repairs, maintenance and refurbishment that the Lessee is obliged to carry out under this document.
- (b) If it is not practical for the Lessee to undertake and complete these requirements before the Sublease comes to an end, then such works must be undertaken immediately after the Sublease comes to an end, but in accordance with the requirements of the Lessor relating to security, access and time for completion.
- (c) When this document comes to an end the Lessee will:
 - (i) hand over vacant possession of the Premises in the same condition as at the Commencement Date (fair wear and tear excepted) ; and
 - (ii) hand over to the Lessor all three key cards (and any additional key cards obtained) and other security devices for the Premises that the Lessee has in its possession or control.
- (d) If at the time that possession of the Premises is given back to the Lessor, the Lessee has not complied with all or any of its obligations under this clause 15.2, the Lessee

will not be relieved of its obligation to comply with those requirements, or to compensate the Lessor for failure to do so, by reason of the fact that the Lessor has accepted or taken possession of the Premises.

15.3 Abandoned Goods

If, when this document comes to an end, the Lessee leaves any goods or equipment at the Premises, then the Lessor will be entitled to deal with and dispose of those goods as it thinks fit.

16. BREACH

16.1 Payment Obligations

- (a) The Lessee must make payments due under this document:
 - without demand (unless this document provides demand must be made);
 - without set-off, counter-claim, withholding or deduction;
 - to the Lessor or as the Lessor directs; and
 - by direct debit or such other means as directed by the Lessor.
- (b) If a payment is stated to be due on a particular Payment Date (such as the next Payment Date or the first Payment Date after an event) and there is no such Payment Date, the Lessee must make that payment on demand.

16.2 Set Off

The Lessor may, by notice to the Lessee, set off against any amount due and payable under this document by the Lessor to the Lessee, any amount due and payable by the Lessee to the Lessor under this document or under any other agreement or arrangement.

16.3 Default, Breach and Re-Entry

In the event that:

- (a) any moneys (or part of any moneys) payable under this document are unpaid for the space of fourteen (14) days after any day on which the same ought to have been paid (although no formal or legal demand has been made);
- (b) the Lessee commits, permits or suffers to occur any breach, or default in the due and punctual observances and performance of any of the covenants, obligations and provisions of the Sublease and fails to remedy such breach or default within 14 days of receipt of a written notice from the Lessor requiring it to do so;
- (c) the Lessee commits, permits or suffers to occur any breach or default of an essential term of this document;
- (d) the Lessee disposes of the whole or any part of its assets, operations or business other than in the ordinary course of business;
- (e) the Lessee ceases to carry on business;

- (f) the Lessee ceases to be able to pay its debts as they become due;
- (g) 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;
- (h) any step is taken to enter into any arrangement between the Lessee and its creditors;
- (i) 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;
- (j) the Lessee is deregistered or dissolved or any step is taken by any person towards that;
- (k) the Lessee is convicted of an indictable offence (other than a traffic offence);
- (l) execution is levied against the Lessee and is not discharged within 30 days;
- (m) any property in or on the Premises is seized or taken in execution under any judgment or proceedings; or
- (n) the Premises is left unoccupied for one (1) month or more without the Lessor's consent;

then despite any other clause of this document the Lessor at any time has the right to re-enter into and upon the Premises in the name of the whole and to have again repossess and enjoy the same as of its former estate but without prejudice to any action or other remedy which the Lessor has or might or otherwise could have for arrears of Rent or any other amounts or breach of covenant or for damages as a result of any such event and the Lessor shall be freed and discharged from any action, suit, claim or demand by or obligation to the Lessee under or by virtue of the Sublease.

16.4 Rights of Lessor not Limited

The rights of the Lessor under this document and at law resulting from a breach of this document by the Lessee shall not be excluded or limited in any way by reason of the Lessor having or exercising any powers under this clause 16.

16.5 Repudiation and Damages

- (a) The Lessee acknowledges that the following obligations under this document are essential terms:
 - (i) the obligation to pay Rent;
 - (ii) the obligation to pay Rates and Taxes (if applicable);
 - (iii) the obligations and restrictions in relation to additions and alterations to the Premises;
 - (iv) the obligations and prohibitions in relation to use of the Premises; and
 - (v) the restriction on assignment, sub-letting, encumbering, mortgaging and licensing.
- (b) If the Lessor accepts payment of Rent or any other moneys late or does not act or exercise any rights immediately or at all in respect of any breach of an essential

term, that conduct on the part of the Lessor will not be deemed to amount to a waiver of the essential nature of that essential term.

- (c) If the Lessee breaches any essential term, that conduct on the part of the Lessee will be deemed to constitute a repudiation of this document and the Lessor may at any time thereafter rescind this document by accepting that repudiation.
- (d) The Lessee agrees that if this document is terminated by the Lessor because of a breach by the Lessee of an essential term, or if the Lessee repudiates this document and the Lessor accepts that repudiation thereby rescinding this document, the Lessee will be obliged to pay compensation to the Lessor including rent and other moneys which the Lessor would otherwise have received under this document for the balance of the Term had the Lessee not breached an essential term or repudiated this document. In those circumstances the Lessor will be obliged to take reasonable steps to mitigate its losses and to endeavour to lease the Premises at a reasonable rent and on reasonable terms.
- (e) The rights of the Lessor under this clause and any action taken by the Lessor hereunder do not exclude or limit any other rights or entitlements which the Lessor has under this document or at law in respect of any breach or repudiatory conduct on the part of the Lessee.

16.6 Interest on Overdue Amounts

If the Lessee does not pay an amount when it is due, it must pay interest on that amount on demand from when the amount became due until it is paid in full. Interest is calculated on outstanding daily balances of that amount at the Default Rate.

16.7 Lessor's Rights on Breach

- (a) If the Lessee is at any time in breach of any of its obligations under this document, and the Lessee fails to remedy that breach to the satisfaction of the Lessor after being requested by the Lessor to do so, the Lessor and anybody authorised by the Lessor for that purpose may at any time thereafter come onto the Premises without notice and do all things necessary to remedy that breach. The Lessee must pay or reimburse the Lessor for all costs and expenses incurred in that regard which the Lessor may recover from the Lessee as a debt due and payable on demand.
- (b) The Lessee will be liable to pay or reimburse the Lessor for all costs and expenses incurred in that regard which the Lessor may recover from the Lessee as a debt due and payable on demand.

16.8 Landlord and Tenant Act

In the case of a breach or default of any term of this document where notice is required to be given pursuant to Section 10 of the Landlord and Tenant Act 1936 (SA), such notices will provide that the period of fourteen (14) days is the period within which the Lessee is to remedy any such breach or default if it is capable of remedy or to make reasonable compensation in money to the satisfaction of the Lessor.

17. Holding over

If, with the Lessor's and Headlessor's consent, the Lessee continues to occupy the Premises after the end of this document, the Lessee does so as a monthly tenant which:

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

18. Indemnity and release

18.1 Risk

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

18.2 Indemnity

The Lessee is liable for and indemnifies the Lessor and Headlessor 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:

- (a) any act or omission of the Lessee;
- (b) the overflow or leakage of water or any other harmful agent into or from the Premises;
- (c) any fire on or from the Premises;
- (d) 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;
- (e) a breach of this document by the Lessee; or
- (f) the Lessee's use or occupation of the Premises.

18.3 Release

The Lessee releases the Lessor and Headlessor 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 any such damage, loss, injury or death is contributed to by any negligent act or omission of the Lessor or Headlessor.

18.4 Indemnities are independent

Each indemnity is independent from the Lessee's other obligations and continues during this document and after this document ends. The Lessor may enforce an indemnity before incurring expense.

18.5 Lessor's liability

Despite anything else in the Sublease, the Lessor will not be liable (except to the extent of any negligence of the Lessor) for any loss or damage, and the Lessee has no right to terminate this document or reduce payments under this document, for any:

- (a) interruption to or defect or malfunction in any Building Services;
- (b) water being upon or coming through any roof, skylight or vent of the Building;
- (c) acts or negligence of other occupants of the Building, adjacent buildings or the public.

19. GOODS AND SERVICES TAX

19.1 Agreed Consideration

If a GST applies to impose tax on the Agreed Consideration or any part of it or if the Lessor is liable to pay GST in connection with this document or any goods, services or other things supplied under this document then:

- (a) the Agreed Consideration for that supply is exclusive of GST;
- (b) the Lessor may increase the Agreed Consideration or the relevant part of the Agreed Consideration by a percentage amount which is equal to the GST Rate; and
- (c) the Lessee shall pay the increased Agreed Consideration on the due date for payment by the Lessee of the Agreed Consideration.

19.2 Tax Invoice

Where the Agreed Consideration is to be increased to account for GST under this clause 19, the Lessor shall, on or before the date on which the Agreed Consideration is payable, issue a tax invoice to the Lessee.

19.3 Liability for Penalties

If the Lessee does not comply with its obligations under the Sublease or with its obligations under GST Legislation in connection with this document and as a result the Lessor becomes liable for penalties or interest for late payment of GST, then the Lessee must pay the Lessor on demand an amount equal to the amount of the penalties and interest.

20. GENERAL

20.1 Costs

The Lessor will pay to the Headlessor:

- (a) all stamp duty (if any) payable on this document;
- (b) all of the costs of preparing, negotiating and finalising this document and any document required by this document.

20.2 The Lessee will pay to the Lessor:

- (a) all stamp duty (if any) payable on this document;
- (b) if the Lessee has requested that this document be registered and this document is capable of registration, all government fees for registration of this document. If a lease plan is required to be prepared and registered before this document can be registered, then the Lessor will arrange and pay for the preparation and registration of that lease plan;
- (c) 50% of the costs of preparing, negotiating and finalising this document and any document required by this document.

20.3 Consent

- (a) Unless otherwise provided in this document, in any case where the doing or execution of any act, matter or thing by the Lessee requires or is subject to the Headlessor's or Lessor's consent or approval:
 - (i) that consent or approval must be prior written consent or approval; and

- (ii) that consent or approval may be given (conditionally or unconditionally) or withheld by the Lessor in its absolute discretion.

- (b) The Lessee must pay or reimburse the Headlessor or Lessor all costs, fees and expenses paid or incurred (including any fees of any agent, consultant, architect or solicitors) arising from or with respect to any application for consent or approval.

20.4 No absolute caveat

The Lessee must not lodge or caused or permit to be lodged any absolute caveat over the certificate of title for the Premises.

20.5 Waiver

If the Lessor 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 document.

20.6 Notice

- (a) Without excluding any other form of service, any notice required to be given or served will be sufficiently given or served as follows:
 - (i) in the case of the Lessee, if left at the Premises, or if the Lessee has vacated the Premises, then if posted by pre-paid post to the last known address of the Lessee;
 - (ii) in the case of the Lessor, if posted by prepaid post to the Lessor at its principal place of business in South Australia (which is taken to be the address stated in this document unless the Lessee is or ought reasonably be aware that that is not the Lessor's principal place of business at the relevant time).
- (b) Any notice may be signed on a party's behalf by its attorney, director, secretary, officer or solicitor.
- (c) Notice served by prepaid post will be deemed to have been given or served three (3) business days after posting.

20.7 Severance

If any part of this document is found to be invalid or void or unenforceable, then that part will be severed from this document and the remainder of this document will continue to apply.

20.8 Entire Agreement

The Lessor and the Lessee acknowledge and agree that this document contains and represents the entire agreement reached between them with regard to the Premises and that no promises, representations or undertakings, other than those contained in this document, were made or given or relied upon.

20.9 Survival

Each indemnity, obligation of confidence and other term capable of taking effect after the expiration or termination of this document, remains in force after the expiration or termination of this document.

21. Subsistence of Headlease

- 21.1 This document is subject in all respects to the continued existence and operation of the Headlease.
- 21.2 If the Headlease expires, terminates, is surrendered or is otherwise determined then this document will be deemed to be terminated contemporaneously with the expiry, termination, surrender or determination of the Headlease.
- 21.3 Neither the Lessor nor the Lessee will in the event of a termination of this document contemplated by clause 21.2 have any claim or recourse against the other except in respect of any antecedent breach or default under this document.

22. Headlessor's consent to this document

The Headlessor's consent to this document will not:

- 22.1 vary the terms and conditions of the Headlease notwithstanding any inconsistency between the terms and conditions of the Headlease and the terms of this document;
- 22.2 waive release or discharge the Lessor from the observance and performance of the Lessor's obligations and duties as lessee pursuant to the Headlease; nor
- 22.3 release discharge waive or otherwise vary or affect the respective rights entitlements duties or obligations of the Headlessor and the Lessor pursuant to the Headlease.

23. Headlease provisions

Despite any other provisions of this document, the Headlessor consents to this document on the following conditions and provisions to which the Lessor and the Lessee agree:

- 23.1 the consent is without prejudice to the rights, powers, discretions and remedies of the Headlessor under the Headlease.
- 23.2 the Lessee must obtain the written consent or approval of the Headlessor in all cases where under this document the consent or approval of the Lessor is required. The Headlessor will not unreasonably withhold its consent or approval in circumstances where consent or approval is not to be unreasonably withheld by the Headlessor to the Lessor in respect of the same case under the Headlease.
- 23.3 upon the lawful termination or surrender (whether expressly or by operation of law) of the Headlease for any reason, the Headlessor may in its absolute unfettered discretion give 14 days written notice to the Lessee terminating this document. If the notice is given, this document will be deemed to have been duly terminated on the date of expiration of the notice.
- 23.4 the Lessee acknowledges that the rent stipulated in this document may not be the market rent for the area occupied by the Lessee.
- 23.5 if any act or omission by the Lessee or any person claiming through it results in a breach of this document and of the Headlease, the Lessor may exercise all remedies, rights and powers of the Lessor against the Lessee under this document as may be reasonably necessary to prevent the continuance or re-occurrence of that breach.
- 23.6 as regards any inconsistency between the Headlease and this document, the Headlease

prevails as between the Headlessor and the Lessor.

- 23.7 as regards any inconsistency between this clause 22 and the other provisions of this document, this clause prevails between the parties.

24. Lessee to observe Headlease

- 24.1 The Lessee must not do anything, or allow anything to be done on the Land which would constitute a breach of the Headlease by the Lessor or limit the rights of the Headlessor under the Headlease.
- 24.2 The Lessee must not do anything that is in breach of the Lessor's obligations under any clause of the Headlease, and must, where applicable to its occupation and use of the Land, observe and perform the obligations contained in those clauses.
- 24.3 Without limitation to clause 25.2, the Lessee agrees to observe the Headlease.
- 24.4 The parties acknowledge and agree that, except to the extent of any inconsistency with the terms and conditions of this document, the provisions of the Headlease will be deemed to form part of this document, and this document will be read and construed as though those clauses were set out in full in this document.

EXECUTED as an agreement

IMPORTANT NOTICE

EXCLUSION OF WARRANTY OF FITNESS FOR PURPOSE

THE LESSOR DOES NOT WARRANT THAT THE PREMISES YOU ARE ABOUT TO LEASE WILL, FOR THE DURATION OF YOUR LEASE, BE STRUCTURALLY SUITABLE FOR THE TYPE OF BUSINESS THAT YOU INTEND TO CARRY ON.

Lessor

**THE COMMON SEAL of SOMERTON SURF
LIFE SAVING CLUB INCORPORATED** was
affixed in accordance with its Constitution in
the presence of;

.....
Signature of Authorised Officer

.....
Signature of Authorised Officer

.....
Name (print)

.....
Name (print)

.....
Position held

.....
Position held

Lessee

EXECUTED by **GAMBELL & SUTTON PTY LTD** in accordance with section 127(1) of the
Corporations Act 2001 (Cth) by:

_____ Signature _____

_____ Print Full Name _____

_____ Print Position _____

and if only one person has signed, that person states that he/she has executed this document as sole director and
sole company secretary of the company

Headlessor

THE COMMON SEAL of **CITY OF HOLDFAST**
BAY was affixed in accordance with a
resolution of the Council in the presence of:

.....
Signature of Mayor

.....
Signature of Chief Executive Officer

.....
Name of Mayor (print)

.....
Name of Chief Executive Officer (print)

SCHEDULE

ITEM 1 Premises	Portion of the land comprised in Certificate of Title Volume 6212 Folio 956 comprising portion of the first floor of the Building at Corner of Repton Road & Esplanade, Somerton Park SA and being the area delineated in red on the plan attached as Annexure A to this document (and for the avoidance of doubt expressly excludes the areas delineated in blue on that floor)				
ITEM 2 Land	The whole of the land comprised in Certificate of Title Volume 6212 Folio 956 situate at Corner of Repton Road & Esplanade, Somerton Park SA 5044				
ITEM 3 Initial Term	One (1) year commencing on the later of 14 November 2022 or such date that the Lessee complied with special conditions, 1, 2 3 of Item 9 of this document (Commencement Date)				
ITEM 4 Renewal	Nil				
ITEM 5 Rent	SIXTY EIGHT THOUSAND THREE HUNDRED AND FORTY DOLLARS (\$68,340.00) per annum (exclusive of GST) subject to review				
ITEM 6 Rent Dates and Review Method	<table> <tr> <td>Review Dates</td><td>Review Method</td></tr> <tr> <td>Not applicable</td><td>Not applicable</td></tr> </table>	Review Dates	Review Method	Not applicable	Not applicable
Review Dates	Review Method				
Not applicable	Not applicable				
ITEM 7 Permitted Use	Restaurant and Function Centre operated in accordance with Development Application Number 21029363, and any such other use as the Sublessor and Headlessor may consent to in writing				
ITEM 8 Public Risk Insurance	Twenty Million Dollars (\$20,000,000.00)				
ITEM 9 Special Conditions	<p>1. EXCLUSION OF 5 YEAR STATUTORY TERM</p> <p>1.1 The Lessee acknowledges and agrees that:</p> <p>(a) neither section 20B(1) of the <i>Retail and Commercial Leases Act 1995</i> (SA) nor the statutory five year term under section 20B(1) apply to this document</p>				

(including that they do not apply for any holding over period which exceeds six months); and

- (b) the grant of this document is conditional upon the Lessee obtaining, and providing to the Lessor, the certificate in Annexure C signed by a lawyer who is acting for the Lessee so that the minimum statutory five year term does not apply to this document.

2. SECURITY DEPOSIT

2.1 Payment of Security Deposit

The Lessee must deposit by cash or unendorsed bank cheque the sum of \$2,200.00 with the Lessor on or before the Commencement Date (**Security Deposit**).

2.2 Interest Bearing Account

The Lessor may, but is not required, to hold the Security Deposit in an interest bearing account on behalf of the Lessee. Any interest earned on the Security Deposit forms part of the Security Deposit.

2.3 Use of Security Deposit

The Lessor may, without notice to the Lessee, apply the Security Deposit for any Loss incurred or loss suffered by the Lessor if the Lessee breaches a Lessee's Covenants or for any other omission, neglect or default of the Lessee.

2.4 Replacement

The Lessee must either replace the Security Deposit or the proportion of the Security Deposit recovered by the Lessor in accordance with Special Condition 1.3 within five Business Days of receiving notice from the Lessor to do so.

2.5 Increase in the Security Deposit

If the amount of the Security Deposit required under this document increases as a result of an increase in Rent or other monies payable by the Lessee under this document then, if demanded by the Lessor, the Lessee must deposit by cash or unendorsed bank cheque with the Lessor an additional Security Deposit for that increased amount within 10 Business Days of the date of the Lessor's demand.

2.6 Return of Security Deposit

Unless the Lessor is entitled to exercise the Lessor's rights under Special Condition 1.3, the Lessor must return the Security Deposit together with any interest earned on the Security Deposit less any charges to the Lessee within two

months after expiry or termination of this document.

2.7 Change of Lessor

If the Lessor deals with the Lessor's interest in the Premises so that another person becomes the lessor:

- (a) the Lessor may assign the Security Deposit to that other person;
- (b) the Lessor has no personal liability to the Lessee for returning the Security Deposit; and
- (c) the Lessee must enter into any document that the Lessor reasonably requires to effect or to perfect an assignment of the Security Deposit to that other person.

3. ALCOHOL

3.1 The Lessee must ensure that its patrons, members and visitors do not bring alcohol onto the Premises.

3.2 The Lessee must not:

- (a) serve, sell or provide to persons; or
- (b) consume or allow persons to consume;
- (c) alcoholic beverages on the Premises

without having applied for a liquor licence under the Liquor Licensing Act 1997 (with the prior written consent of the Lessor and Headlessor) and obtained a liquor licence on those same terms and conditions approved by the Lessor and Headlessor.

3.3 If the Lessee obtains a licence (or licences), the Lessee must not do (or fail to do) or allow any of its employees, agents, contractors, licensees or invitees to do (or fail to do):

- (a) anything that is in breach of the Liquor Licensing Act 1997 or of the conditions of the relevant licence; or
- (b) anything that may result in the relevant licence being revoked or suspended.

3.4 The Lessee undertakes to the Lessor to provide the Lessor with a copy of any notices issued to it under the Liquor Licensing Act 1997.

4. TRADING HOURS & OPERATIONS

4.1 The Lessee may only trade during the following times (which may be changed with the prior written consent of the Lessor and Headlessor):

Monday	Closed
Tuesday	Closed
Wednesday	11.00am to 10.00pm

	Thursday	11.00am to 10.00pm
	Friday	11.00am to Midnight
	Saturday	11.00am to Midnight
	Sunday	11.00am to 10.00pm
	Public Holidays	As per relative day above (subject to Legislative Requirements)
<p>4.2 The Lessee must ensure that all times it complies with the conditions of planning consent in respect of Development Application Number 21029363.</p> <p>4.3 The Lessee must ensure that its business activities from the Premises do not interfere or compete with the business operations of the kiosk trading within the Building.</p> <p>4.4 The Lessor will ensure that any trading from the Premises does not interfere or compete with the business activities of the kiosk trading within the Building.</p> <p>4.5 The Lessee must operate its business activities in a professional manner, as a separate tenant of the Building and must not in any way represent or otherwise hold itself out in any way as being associated with the Lessor.</p>		
<p>5. CHILD SAFE ENVIRONMENT</p> <p>5.1 The Lessee acknowledges that the Headlessor is committed to providing a child safe environment (as defined by the Children and Young People (Safety) Act 2017 (SA)) at all times. A child safe environment is 'an environment, which is both child-safe and child-friendly, where children are valued and feel respected and encouraged to reach their full potential.'</p> <p>5.2 The Lessee represents to the Lessor and Headlessor that it has fulfilled and will ensure that it continues to fulfil its requirements under the Children and Young People (Safety) Act 2017 (SA) in relation to occupying the Premises for the Permitted Use.</p> <p>5.3 The Lessee must act in the best interests of the community at large.</p> <p>5.4 If the Headlessor makes a request of the Lessee under this special condition, the Lessee must provide the requested documents to the Lessee within 10 Business Days of such request. Failure to do so will be considered a breach of an essential term of this document.</p>		
<p>6. LESSEE'S FITOUT</p> <p>6.1 The Lessee is not permitted to install or allow any Fitout Works to be undertaken in respect of the Premises or the Building except in accordance with this special condition.</p>		

	<p>6.2 The Lessee may only carry out Fitout Works in accordance with final fitout plans that comply with the Headlessor's written requirements (if any), and undertaken:</p> <ul style="list-style-type: none"> (a) in a proper and workmanlike manner; (b) in a manner that does not expose people to a health and safety risk; (c) using good quality materials; (d) in accordance with the specifications approved by the Lessor and Headlessor; (e) in accordance with all approvals and the requirements of authorities; (f) in accordance with the reasonable directions of the Lessor and the Lessor's representative; (g) in a manner so as not to: <ul style="list-style-type: none"> (i) disturb other contractors or occupants of the Building; or (ii) prevent or hinder access to the Premises or any part of them by the Lessor or any person authorised by the Lessor; <p>6.3 In carrying out the Fitout Works the Lessee must:</p> <ul style="list-style-type: none"> (a) ensure that the Fitout Works and all contractors are appropriately insured with evidence of the policies provided to the Lessor and Headlessor; (b) ensure that the Lessee's employees, contractors, agents and invitees comply with the requirements of all relevant building site awards and conditions relevant to the construction of the Fitout Works; (c) not bring any heavy items of machinery into the Premises likely to damage the Building without the prior approval of the Lessor; (d) use the access paths, loading dock and lifts in the Building only to the extent approved from time to time by the Lessor or the Lessor's representative (each acting reasonably), having regard to the requirements of other occupants of the Building; and (e) ensure that any defects in the Fitout Works are rectified promptly. <p>6.4 The Lessee indemnifies the Lessor against any action or demand due to any damage, loss, injury or death caused or contributed to by:</p> <ul style="list-style-type: none"> (a) the Lessee's act or negligence; or (b) the Lessee's Fitout Works, <p>except to the extent caused by a negligent act or omission of the Lessor.</p>
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- 6.5 The Lessee releases the Lessor and Headlessor from any action or demand due to any damage, loss, injury or death occurring in or near the Premises, except to the extent caused by a negligent act or omission of the Lessor or Headlessor.
- 6.6 The Fitout Works and the use by the Lessee of the Land, the Building and the Premises are at the Lessee's risk except to the extent caused by the wilful or negligent act or omission of the Lessor.
- 6.7 If the Lessee fails to pay for all or any part of the Fitout Works then the Lessor may do so on the Lessee's behalf, and on making any such payment by the Lessor, the Lessor will immediately be entitled to recover all such fees from the Lessee in the same manner as rent is due and payable under this document.
- 6.8 In this special condition, "**Fitout Works**" means the works and installations to fit out and prepare the Premises to the Lessee's occupational requirements as depicted in the plans and specifications approved by the Lessor and Headlessor.

7. ACCESS TO PREMISES

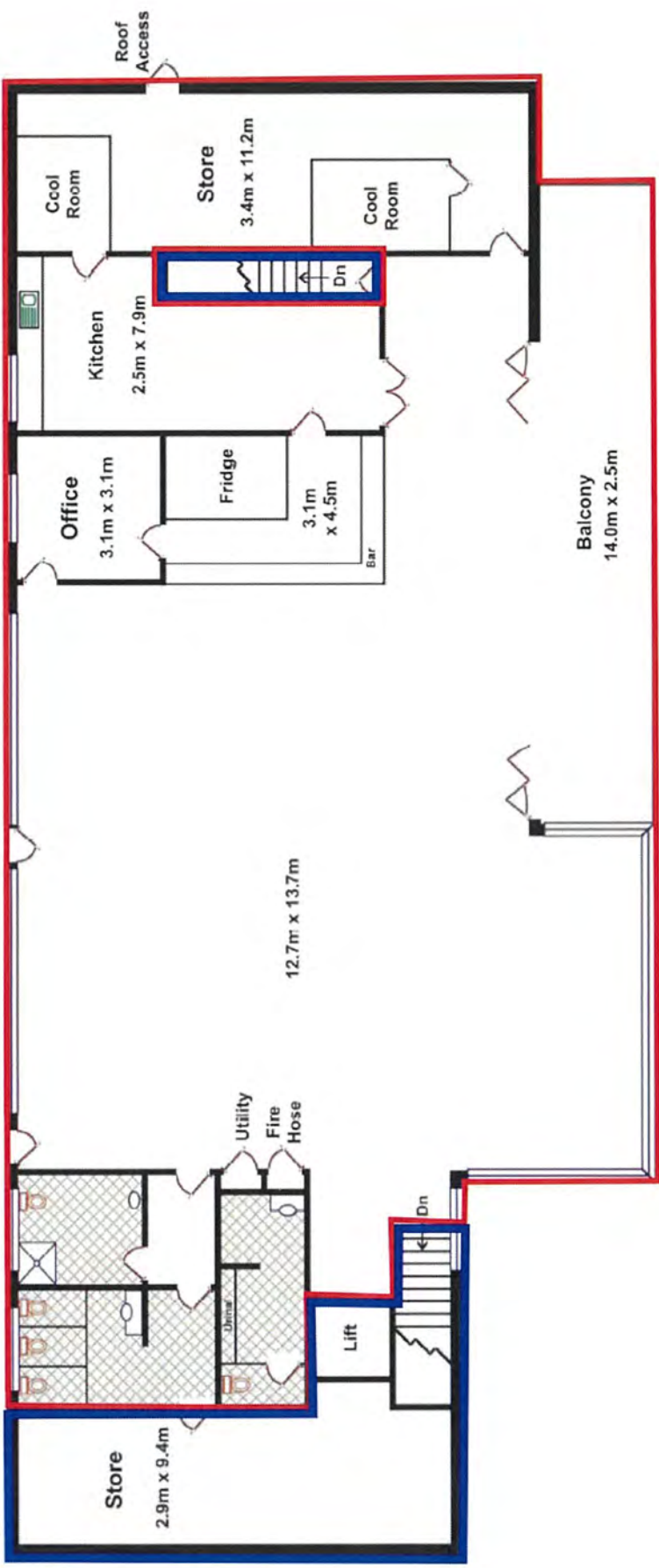
- 7.1 The Lessee acknowledges that the Lessor:
- (a) is given a first right of refusal to use the Premises for a maximum of five functions and 10 training/assessment days in each lease year (**Event Times**) except that the training assessment days will be scheduled on those days that the Lessee does not trade under special condition 4. The Lessor will notify the Lessee of its nominated Event Times within 21 days of the Commencement Date (for the lease year). The Lessor will consult with the Lessee in relation to the Event Times. If requested, the Lessee unconditionally agrees to provide catering and bar services to the Lessor for the relevant Event Times.
 - (b) may inspect the Premises on the giving of at least 24 hours prior written notice to the Lessee.
 - (c) and its members may access and use the Premises outside the trading hours of the Lessee (which trading hours include one hour before and after those hours the Lessee is open to its customers).
- 7.2 The Lessor will ensure that the Lessee (and its employees and customers) are able to obtain access to the Premises via the foyer of the Building, the lift or staircase.

8. MEMBER DISCOUNTS

Upon the Lessor and its members providing to the Lessee a current membership card for the Somerton Surf Life Saving Club, the Lessee unconditionally agrees to provide a 10% discount on all regular food and beverage prices.

	<p>9. STOREROOM</p> <p>In consideration for the Rent and provided that the Lessee is not in material breach of its obligations under this document, the Lessor will allow the Lessee to store furniture and other loose items in the northern storeroom at its own risk in all respects (subject to available the space not being required by the Lessor at any point in time).</p>

ANNEXURE A - PLAN OF PREMISES



ANNEXURE B - HEADLEASE

ANNEXURE C – LAWYER’S CERTIFICATE

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

This certificate is given in relation to the following:

Exclusionary clause:

Item 9 of the Schedule of the Lease, Special condition 1

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:

Portion of the land comprised in Certificate of Title Volume 6212 Folio 956 comprising portion of the first floor of the Building at Corner of Repton Road & Esplanade, Somerton Park SA and being the area delineated in red on the plan attached as Annexure A to this document (and for the avoidance of doubt expressly excludes the areas delineated in blue on that floor)

The lessor is:

Somerton Surf Life Saving Club Incorporated ABN 85 241 889 464 of corner of Repton Road & Esplanade, Somerton Park SA 5044

The prospective lessee is:

Gambell & Sutton Pty Ltd ACN 637 647 940 of Corner Repton Road, 2 Esplanade, Somerton Park SA 5044

I do not act for the lessor.

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.

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:



DEVELOPMENT APPROVAL

DECISION NOTIFICATION FORM

Section 126(1) of the Planning, Development and Infrastructure Act 2016

TO THE APPLICANT(S):

Name: Somerton Surf Life Saving Club Incorporated
Postal address: 57 Repton Road North Brighton SA 5048
Email: facilities@somertonsurfclub.com.au

IN REGARD TO:

Development application no.: 21029363	Lodged on: 14 Oct 2021
Nature of proposed development: Change of use for the upstairs portion of the building to a to a Bistro and function centre in addition to the existing use as a sports club.	

LOCATION OF PROPOSED DEVELOPMENT:

Location reference: 57 REPTON RD NORTH BRIGHTON SA 5048		
Title ref.: CT 6212/956	Plan Parcel: D117606 AL21	Council: CITY OF HOLDFAST BAY

DECISION:

Decision type	Decision (granted/refused)	Decision date	No. of conditions	No. of reserved matters	Entity responsible for decision (relevant authority)
Planning Consent	Granted	27 Apr 2022	7	0	Assessment Panel at City of Holdfast Bay
Building Consent	Not Required	3 May 2022	0	0	City of Holdfast Bay
Development Approval - Planning Consent; Building Consent	Granted	6 May 2022	7	0	City of Holdfast Bay

FROM THE RELEVANT AUTHORITY: City of Holdfast Bay
Date: 6 May 2022

CONDITIONS

Planning Consent

Condition 1

The development granted approval shall be undertaken and completed in accordance with the stamped plans and documentation, except where varied by conditions below (if any).

Condition 2

Use of the first floor of the clubrooms building for bistro dining and/or functions shall be limited to the following hours

Wednesday 11.00 AM to 10.00 PM

Thursday 11.00 AM to 10.00 PM
Friday 11.00 AM to 12.00 Midnight
Saturday 11.00 AM to 12.00 Midnight
Sunday 11.00 AM to 10.00 PM

Condition 3

The maximum capacity for functions shall be 130 persons excluding staff

Condition 4

The development shall ensure that all functions and events occurring in the first floor of the clubrooms provides the following management measures:

(a) a nominated contact person shall be nominated by the operator, who shall be present at all functions / events, and whom may be called by mobile telephone to respond to any complaint in real time, and whom has authority to direct patrons and other users of the facility.

Condition 5

As outlined in the Music Assessment prepared by Sonus on behalf of the Applicant dated July 2021, the following noise reduction measures shall be observed and implemented by the Applicant:

- the noise level arising from the playing of music shall not exceed 90 dB(A) when measured at the eastern glazing line of the clubroom building;
- music (other than background music) shall be played through an in-house system which incorporates a limiting device;
- an acoustic engineer shall be required to confirm that this in-house system is calibrated to ensure that the above measure is not exceeded; and
- the eastern louvres and door to the balcony shall be closed at any period.

Condition 6

No amplified music shall be played externally to the building at any time

Condition 7

Servicing of the development in the form of food and beverage deliveries and waste collection shall only occur between the hours of 9am and 6pm Monday to Saturday.

Building Consent

None

ADVISORY NOTES

General Notes

1. No work can commence on this development unless a Development Approval has been obtained. If one or more consents have been granted on this Decision Notification Form, you must not start any site works or building work or change of use of the land until you have received notification that Development Approval has been granted.
2. Appeal rights – General rights of review and appeal exist in relation to any assessment, request, direction or act of a relevant authority in relation to the determination of this application, including conditions.
3. This consent or approval will lapse at the expiration of 2 years from its operative date, subject to the below or subject to an extension having been granted by the relevant authority.
4. Where an approved development has been substantially commenced within 2 years from the operative date of approval, the approval will then lapse 3 years from the operative date of the approval (unless the development has been substantially or fully completed within those 3 years, in which case the approval will not lapse).

5. A decision of the Commission in respect of a development classified as restricted development in respect of which representations have been made under section 110 of the Act does not operate—
- a. until the time within which any person who made any such representation may appeal against a decision to grant the development authorisation has expired; or
 - b. if an appeal is commenced—
 - i. until the appeal is dismissed, struck out or withdrawn; or
 - ii. until the questions raised by the appeal have been finally determined (other than any question as to costs).

Planning Consent

None

Building Consent

None

CONTACT DETAILS OF CONSENT AUTHORITIES

Name: City of Holdfast Bay	Type of consent: Planning; Building
Telephone: 8229 9999	Email: dalodgement@holdfast.sa.gov.au
Postal address: PO Box 19, BRIGHTON SA 5048	



Attachment 3

THE SCHEDULE

Item 1	The Sublessee	Name: Gambell & Sutton
Item 2	Functions of Sublessee	Restaurant and Function Centre
Item 3	Property	That portion of the Headlease Land delineated in red comprising approximately 402m ² and marked "A" on the Plan annexed hereto as Annexure A
Item 4	Sublease Period	Three (3) years and forty (40) days from 27 October 2023 until 6 December 2026
Item 5	Commencement Date	28 October 2023
Item 6	Annual rent and Time of Payment	<p>\$75,000 excl. GST per annum (as reviewed in accordance with the terms of this Sublease) payable monthly in advance in equal monthly instalments of \$6,250 excl. GST on the 1st day of each calendar month during the Term.</p> <p>The Sublessor shall pay \$22,500 excl. GST per annum (as reviewed in accordance with the terms of this Sublease) to the City of Holdfast Bay (the Council) monthly in advance in equal monthly instalments of \$1,875 on the 1st day of each calendar month during the Term.</p>
Item 7	Rent Review Date	One (1) year from the sub-lease Commencement Date
Item 8	Use of Property	Restaurant and Function Centre operated in accordance with the approved land use and conditions imposed through Development Application Number 21029363, and such other lawful use as the Sublessor may consent to in writing
Item 9	Public Risk Insurance	Twenty Million Dollars (\$20,000,000.00) at the start of this Sublease. The Sublessor or the Council has the right to require the Sublessee to increase its public risk cover at any time to any figure nominated by the Sublessor or the Council
Item 10	Period of Sublease	Three (3) years and forty (40) days from 28 October 2023 until 6 December 2026
Item 11	Special Conditions	<p>1. Subsistence of Headlease</p> <p>1.1. This Sublease is subject in all respects to the continued existence and operation of the Headlease.</p> <p>1.2. If the Headlease expires, terminates, is surrendered or is otherwise determined then this Sublease will be deemed to be terminated contemporaneously with the expiry, termination, surrender or determination of the Headlease.</p> <p>1.3. Neither the Sublessor nor the Sublessee will in the event of</p>

		<p>a termination of this Sublease contemplated by special condition 1.2 have any claim or recourse against the other except in respect of any antecedent breach or default under this Sublease.</p> <p>2. Council's consent to this Sublease</p> <p>2.1. The Council's consent to this Sublease will not:</p> <ul style="list-style-type: none"> (a) waive release or discharge the Sublessor from the observance and performance of the Sublessor's obligations and duties as lessee pursuant to the Headlease; nor (b) release discharge waive or otherwise vary or affect the respective rights entitlements duties or obligations of the Council and the Sublessor pursuant to the Headlease. <p>3. Headlease provisions</p> <p>3.1. Despite any other provisions of this Sublease, the Council consents to this Sublease on the following conditions and provisions to which the Sublessor and the Sublessee agree:</p> <ul style="list-style-type: none"> (a) the consent is without prejudice to the rights, powers, discretions and remedies of the Council under the Headlease; (b) the Sublessee must obtain the written consent or approval of the Council in all cases where under this Sublease the consent or approval of the Lessor is required. The Council will not unreasonably withhold its consent or approval in circumstances where consent or approval is not to be unreasonably withheld by the Council to the Sublessor in respect of the same case under the Headlease; (c) upon the lawful termination or surrender (whether expressly or by operation of law) of the Headlease for any reason, the Council may in its absolute unfettered discretion give fourteen (14) days written notice to the Sublessee terminating this Sublease. If the notice is given, this Sublease will be deemed to have been duly terminated on the date of expiration of the notice; (d) the Sublessee acknowledges that the rent stipulated in this Sublease may not be the market rent for the area sublet by the Sublessee; (e) if any act or omission by the Sublessee or any person claiming through it results in a breach of this Sublease and of the Headlease, the Sublessor may exercise all remedies, rights and powers of the Sublessor against the Sublessee under this Sublease as may be reasonably necessary to prevent the continuance or
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re-occurrence of that breach; and

- (f) as regards any inconsistency between the Headlease and this Sublease, the Headlease prevails as between the Council and the Sublessor.

4. Sublessee to observe Headlease

- 4.1. The Sublessee must not do anything, or allow anything to be done on the Land which would constitute a breach of the Headlease by the Sublessor or limit the rights of the Council under the Headlease.
- 4.2. The Sublessee must not do anything that is in breach of the Sublessor's obligations under any clause of the Headlease, and must, where applicable to its occupation and use of the Land, observe and perform the obligations contained in those clauses.
- 4.3. Without limiting special condition 4.2, the Sublessee agrees to observe the Headlease.
- 4.4. The parties acknowledge and agree that, except to the extent of any inconsistency with the terms and conditions of this Sublease, the provisions of the Headlease will be deemed to form part of this Sublease, and this Sublease will be read and construed as though those clauses were set out in full in this Sublease.

5. Trading of Restaurant and Function Centre

The Sublessor will ensure that the trading of the upstairs restaurant and function centre does not interfere with the operations of the downstairs Kiosk, and that its offerings do not compete with those of the Kiosk. The trading hours of the upstairs restaurant and function centre shall be in accordance with the those approved by the City of Holdfast Bay Council Assessment Panel through Development Application Number 21029363, being:

Day	Hours
Monday	Closed
Tuesday	Closed
Wednesday	11.00am to 10.00pm
Thursday	11.00am to 10.00pm
Friday	11.00am to Midnight
Saturday	11.00am to Midnight
Sunday	11.00am to 10.00pm
Public Holidays	As per relative day above

ANNEXURE A – PLAN OF PROPERTY

Sub-Leasable Area = 402m²

