

ITEM NUMBER: 18.1

CONFIDENTIAL REPORT

WINTER ACTIVATION

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:

- d. commercial information of a confidential nature (not being a trade secret) the disclosure of which –
 - i. 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
 - ii. would, on balance, be contrary to the public interest.

Recommendation – Exclusion of the Public – Section 90(3)(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: 46/24 Winter Activation 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: 46/24 Winter Activation on the following grounds:
 - 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: WINTER ACTIVATION

Summary

At the Council meeting held 12 December 2023, Council approved Administration commencing negotiations with Gluttony Food and Wine Pty Ltd for the delivery of the Glenelg Winter Arts Festival. A draft licence agreement has been negotiated and is presented for Council approval.

Recommendation

1. That Council approves the Mayor and Chief Executive Officer to execute a three-year licence agreement with Gluttony Food and Wine Pty Ltd for the delivery of the Glenelg Winter Arts Festival, subject to endorsement by the Jetty Road Mainstreet Committee as co-funders of the event, and minor changes of wording as required.

RETAIN IN CONFIDENCE - Section 91(7) Order

2. That having considered Agenda Item 18.1 - 46/24 Winter Activation in confidence under section 90(2) and (3)(d) of the *Local Government Act 1999*, the Council, pursuant to section 91(7) of that Act orders that the report, attachment and minutes be retained in confidence for a period of 36 months and that this order be reviewed every 12 months.
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Background

At the Council meeting held 28 November 2023, Council endorsed the following motion:

Motion

C281123/7626

That Council:

1. *notes this report;*
2. *approves the Chief Executive Officer signing the attached letter of intent to commence negotiations of a three-year agreement with Gluttony Food and Wine Pty Ltd;*
3. *notes that a further report will be brought to Council on the outcomes of the negotiation; and*
4. *consults with Jetty Road Mainstreet Committee to confirm a commitment of budget to this event.*

The Jetty Road Mainstreet Committee (JRMCM) at its meeting held 13 December 2023 endorsed Council to negotiate a three-year agreement with Gluttony. In addition, subject to an agreement being reached, approved the allocation of up to \$75,000 from each of the 2024-25, 2025-26 and 2026-27 JRMCM budgets to support the event.

Report

Administration worked with an external Legal Advisor to draft the Agreement Licence, which has been agreed in-principle by Gluttony Food and Wine Pty Ltd.

Refer Attachment 1

Key points:

- The Licence Agreement includes a subsidy of \$150,000 in 2024, \$140,000 in 2025 and \$130,000 in 2026. This is the maximum amount which will be adjusted in line with the event's overall trading result as required.
- Engagement with Jetty Road Traders is specified in the Agreement.
- Either party may terminate the Agreement by providing 90 days' written notice.

The Licence Agreement assumes that the cost will be shared equally between Council and JRMCM. Should Council approve entering into the Agreement, the draft licence will be presented to the Jetty Road Mainstreet Committee at their meeting on 6 March 2024 for endorsement as co-funders.

Budget

The Agreement assumes a commitment of up to \$150,000 in 2024-25, \$140,000 in 2025-26, and \$130,000 in 2026-27. This would be split equally between Council's events budget and JRMCM.

Life Cycle Costs

Not applicable

Strategic Plan

Innovation: economic and social vibrancy and a thriving environment

Council Policy

City of Holdfast Bay Events Strategy 2021-2025

Statutory Provisions

Not applicable

Written By: Manager City Activation

General Manager: Community and Business, Ms M Lock

Attachment 1

DATE

CITY OF HOLDFAST BAY
ABN 62 551 270 492
(Licensor)

- and -

GLUTTONY FOOD AND WINE PTY LTD
ABN 25 140 470 882
(Licensee)

LICENCE

LICENCE

DATE

PARTIES

CITY OF HOLDFAST BAY ABN 62 551 270 492 of PO Box 19 Brighton SA 5048 (**Licensor**)

GLUTTONY FOOD AND WINE PTY LTD ABN 25 140 470 882 of PO Box 3527 Norwood SA 5067 (**Licensee**)

The Licensor grants to the Licensee a licence to use the Premises described in this Schedule on the terms and conditions contained in this Schedule and the attached Standard Licence Terms which form part of this licence.

SCHEDULE

Item 1 <i>(Land)</i> The whole of the land contained in Certificate of Title Volume 5972 Folio 927 known as Colley Reserve and located at Colley Terrace, Glenelg SA
Item 2 <i>(Premises)</i> Portion of the land contained in Certificate of Title Volume 5972 Folio 927 known as portion of Colley Reserve located at Colley Terrace, Glenelg SA as delineated in red on the plan attached as Annexure A
Item 3 <i>(Commencement Date)</i> 17 June 2024 (not contiguous to the Expiry Date, and subject to the Times of Use)
Item 4 <i>(Expiry Date)</i> 31 July 2026 (not contiguous to the Commencement Date, and subject to the Times of Use)
Item 5 <i>(Licence Fee)</i> Nil
Item 6 <i>(Review Date)</i> Not applicable
Item 7 <i>(Services)</i> All services used or consumed by the Licensee on the Premises.
Item 8 <i>(Outgoings)</i> Not applicable

Item 9

(Licensee's Share)

Not Applicable

Item 10

(Permitted Use)

Permitted Use is winter festival events, including live performances, workshops, sale of liquor, food and merchandise, management of artistic programming, the erection of tents and siting of event related infrastructure such as: Toilets, bars, temporary flooring, access flooring and plant & equipment and operating under the event name 'Glenelg Winter Arts Festival'

Item 11

(Times of Use)

Times of Use means the periods of 17 June 2024 to 2 August 2024 (inclusive), 16 June 2025 to 1 August 2025 and 15 June 2026 to 31 July 2026 (inclusive) and during those periods, more specifically:

1. **Mondays:** no trading to the public, however the Licensee may access the Premises from 7.00am to 6.00pm.
2. **Tuesdays to Thursdays (inclusive):**
 - (a) the Licensee's access to the Premises is permitted from 7.00am to 11.00pm;
 - (b) the Premises may only be open for trading to the public between the hours of 11.00am to 10.00pm;
 - (c) no music permitted from 9.30pm to open of trade the next trading day;
 - (d) the event must be shutdown by 10.30pm until 10.00am on the next trading day.
3. **Fridays:**
 - (a) the Licensee's access to the Premises is permitted from 7.00am to midnight;
 - (b) the Premises may only be open for trading to the public between the hours of 11.00am to 11.00pm,
 - (c) no music permitted from 10.30pm to open of trade the next trading day;
 - (d) the event must be shutdown by 10.30pm until 10.00am on the next trading day.
4. **Saturdays:**
 - (a) the Licensee's access to the Premises is permitted from 9.00am to midnight;
 - (b) the Premises may only be open for trading to the public between the hours of 11.00am to 11.00pm,
 - (c) no music permitted from 10.30pm to open of trade the next trading day;
 - (d) the event must be shutdown by 11.30pm until 10.00am on the next trading day.
5. **Sundays:**
 - (a) the Licensee's access to the Premises is permitted from 9.00am to 11.00pm;
 - (b) the Premises may only be open for trading to the public between the hours of 11.00am to 10.00pm;
 - (c) no music permitted from 9.30pm to open of trade the next business day;
 - (d) the event must be shutdown by 10.30pm until 10.00am on the next trading day.

or as otherwise approved by the Licensor on the Licensor's assessment of the Licensee's detailed event program (as submitted to the Licensor).

Note: the Licensor and the Licensee's security contractors are permitted 24 hour access, 7 days a week during the Trading Period as defined in special condition 3.2.

Item 12

(Licence Fee Review)

Not applicable

Item 13

(Renewal)

Not applicable

Item 14

(Insurance)

The Licensee must effect and keep current during the Term:

1. **Public Risk Insurance**

A policy of public risk insurance applicable to the Premises and the Permitted Use in the joint names of the Licensors and Licensee for an amount not less than \$20,000,000.00 per claim and unlimited in the annual aggregate, or such higher amount as the Licensors may reasonably require from time to time.

2. **Other**

All plant, equipment and belongings of the Licensee for their full replacement value and any policy required by law or which the Licensors reasonably require.

Item 15

(Additional Conditions)

1. **CHILD SAFE ENVIRONMENT**

- 1.1 The Licensee acknowledges that the City of Holdfast Bay 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.
- 1.2 The Licensee represents to the Licensors 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.
- 1.3 The Licensee must act in the best interests of the community at large.
- 1.4 The Licensee must at the request of the Licensors provide a current police clearance or the relevant criminal history screening certificate under relevant legislation for the Licensee or any of the Licensee's officers, volunteers, members, employees, contractors, tenants and agents who provide services from the Premises.
- 1.5 If the Licensors make a request of the Licensee under this special condition, the Licensee must provide the requested documents within 10 business days of such request. Failure to do so will be considered a breach of an essential term of this licence.

2. **LIQUOR LICENCE**

- 2.1 Unless the Licensee first obtains the written consent of the Licensors (such consent not to be unreasonably withheld or conditioned), the Licensee must not apply for a liquor licence under the Liquor Licensing Act 1997.
- 2.2 If the Licensee obtains a licence under special condition 2.1, the Licensee 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.
- 2.3 The Licensee will at the Licensee's own cost at all times during the Term comply with all of the requirements of the Liquor Licensing Act and every order and requirement relating to the Premises made or imposed by the Licensing Authority. In default thereof, it shall be lawful for but not obligatory upon the Licensors to enter the Premises and to comply with, observe, carry out and perform such order or requirement. All costs incurred by the Licensors in so doing shall be repaid by the Licensee to the Licensors upon demand. Any work carried out by the Licensee pursuant to any such order or requirement shall be carried out to the reasonable satisfaction of the Licensors.
- 2.4 The Licensee will during the Term supply to the Licensors within seven (7) days after receiving or forwarding the same from or to the Licensing Authority a copy of every form, letter, application or other communication with the Licensing Authority.
- 2.5 If the Licensee receives any summons, complaint or other legal process or any notice or communication from any person or authority relating to the Premises or to any licence issued in

respect thereof, the Licensee must immediately provide to the Licensor a copy of such notice or communication and details of all relevant circumstances and events.

3. FINANCIAL SUBSIDY OF LICENSOR

- 3.1 The Licensor agrees to contribute to the Licensee's costs of operating the Glenelg Winter Arts Festival (**Festival**) strictly in accordance with this special condition.
- 3.2 In this special condition:
- (a) **Gross Receipts** means the gross amount that the Licensee or any other person receives or is entitled to receive from the conduct of the Festival on or from the Premises for the Relevant Trading Period;
 - (b) **Operating Costs** means the actual and reasonable costs the Licensee incurs in conducting the Festival on or from the Premises for the relevant Trading Period;
 - (c) **Trading Cost** means Operating Cost less Gross Receipts for the relevant Trading Period
 - (d) **Trading Period** means each period in which the Glenelg Winter Arts Festival operates in each of the years 2024, 2025 and 2026 (including the period of commissioning and decommissioning); and
 - (e) **Transactions** means all transactions incurred, undertaken or affecting the Gross Receipts and the Operating Costs.
- 3.3 Subject to special conditions 3.4 and 8, to the extent that the Trading Cost is a negative number, the Licensor will pay the Licensee such amount to bring the Trading Cost to 'break even', but such amount is strictly capped as follows:
- (a) for the Trading Period in the year 2024, \$150,000.00 exclusive of GST;
 - (b) for the Trading Period in the year 2025, \$140,000.00 exclusive of GST; and
 - (c) for the Trading Period in the year 2026, \$130,000.00 exclusive of GST.
- 3.4 The payment in special condition 3.3 may be made by the Licensor in instalments, and in advance, or within 14 days of receiving the documents under special condition 3.5(e). In the event of an overpayment by the Licensor to the Licensee for any Trading Period, the Licensee must pay the Licensor the amount of the overpayment such the amount paid by the Licensor is (if applicable) equal to the amount of any financial contribution payable under special condition 3.3.
- 3.5 The Licensee must:
- (a) keep full records of all Transactions;
 - (b) keep those records for two calendar years after the relevant Trading Period;
 - (c) allow the Licensor to inspect all financial and related records on request;
 - (d) allow an auditor appointed by the Licensor to inspect those records on request by the auditor and promptly answer the auditor's queries;
 - (e) within 14 days of the end of each Trading Period, give the Licensor a statement, signed by the Licensee or an officer of the Licensee, of the Transactions for the relevant Trading Period;
 - (f) within 60 days of the end of each Trading period give the Licensor a statement, certified by an independent auditor or accountant, that the Lessee's Transactions for the Trading Period are correct; and
 - (g) immediately pay both the cost of any audit showing that Operating Costs being less than the amount shown in any statement by more than 2% and any resulting adjustment of Operating Costs.

4. EARLY TERMINATION

- 4.1 The Licensor and Licensee covenant and agree that:

- (a) this licence may be terminated at any time during the Term by either party giving to the other at least ninety (90) days written notice of its intention to terminate (**Termination Notice**);
- (b) if the Termination Notice is given in accordance with special condition 4.1, this licence will terminate on the expiration of ninety (90) days after the service of the Termination Notice or such further period (if any) as may be agreed in writing between the Licensor and Licensee (**Termination Date**);
- (c) on the termination of this licence pursuant to this special condition, neither party will have any claim against the other in relation to such termination but without prejudice to:
 - (1) the rights of either party for any antecedent breach or default; and
 - (2) the Lessee's obligations to rectify and make good the Premises on or before the Termination Date; and
 - (3) if this licence is terminated pursuant to this special condition, the Licensee will promptly on receipt execute a Deed of Surrender (in such format as the Licensor requires).

5. LICENSEES OBLIGATION TO ENGAGE LOCAL BUSINESSES

- 5.1 The Licensee recognises that support of businesses in Jetty Road Glenelg is an important requirement for the Permitted Use. Accordingly, the Licensee will, subject to the suitability of the relevant trader's business operations for the Permitted Use:
 - (a) provide Jetty Road Glenelg traders with first right of refusal for the provision of food and pop up stalls;
 - (b) liaise and collaborate with the Licensor to develop packages and other incentives for patrons to shop in the Jetty Road Glenelg Precinct;
 - (c) actively promote the precinct for dining and experience options;
 - (d) ensure any third-party food and beverage partnerships to be shared with the Licensor for feedback prior to approval.
- 5.2 The Licensee shall use the Licensor's Jetty Road logos in accordance with the Licensor's brand guidelines and any specific instructions provided by the Licensor. The Licensee must ensure the logos are clearly visible and appropriately placed on all promotional materials and collateral related to the event or project.
- 5.3 The Licensee will provide a detailed marketing plan to the Licensor and work closely with the Licensor in its implementation.
- 5.4 The Licensor agrees to provide the Licensee with marketing support through those physical and digital assets owned by the Licensor by displaying for the Licensee a banner at Mosely Square, entry statements and bin core flutes, website and social media exposure, and also, on the Licensor's Jetty Road Glenelg annual marketing program.
- 5.5 The Licensee must submit all advertisements, promotional materials, and public statements containing the Licensor's Jetty Road logos to the Licensor for review and approval prior to publication, distribution, or release. The Licensor reserves the right to request changes or modifications to ensure proper logo usage and adherence to branding guidelines.
- 5.6 The Licensee must obtain the Licensor's prior written approval for any public statements, press releases, social media comments, interviews for similar publications or communications that mention the Licensor or its involvement with the rights granted by this Licence and/or association with the Permitted Use.

6. FUTURE GLENELG WINTER ARTS FESTIVAL EVENTS

- 6.1 The parties acknowledge that the event name "Glenelg Winter Arts Festival" is unregistered and is not owned by any person or entity.
- 6.2 Whilst the event name remains unregistered and available for use, the Licensor agrees to grant the Licensee the first right of refusal to operate or be involved in any future events that bear the name "Glenelg Winter Arts Festival" or such event being materially similar to it. The Licensor will not engage any other event operator for such events without first offering the Licensee the opportunity to participate or operate the event on agreed terms.

7. EVENT SETUP, SECURITY, ALTERATIONS, ADDITIONS & MODIFICATIONS

- 7.1 The Licensee will provide the following for each event operating as 'Glenelg Winter Arts Festival':
- (a) a spacious, heated tent venue with comprehensive schedule of live performances;
 - (b) a heated satellite tent for forums, workshops and smaller performances;
 - (c) a variety of food and beverage stalls
 - (d) management of the artistic programming,
 - (e) management of ticketing services
 - (f) staffing for bump-in/out, production & logistics and service staff for the season;
 - (g) comprehensive marketing for each event.
- 7.2 The Licensee is responsible for all costs in connection with caretaking and security services in respect of the Premises.
- 7.3 The Licensee must not undertake any alterations, additions or modifications to any structure, path or any part of the Premises nor erect nor install any signage on the Premises (or the Land) without the prior written consent of the Licensor. The Licensor will permit the following signage on the Premises during the relevant Trading Period:
- (a) signs promoting the event (not of a size or nature requiring development approval); and
 - (b) legislative and directional signage (not of a size or nature requiring development approval).

8. SITE REMEDIATION

If post event remediation of the lawn requires returfing (as determined by the Licensor), the Licensee will be responsible for those remediation costs, up to a maximum capped amount of \$10,000 ex GST (but such cap does not include any other damage caused or contributed by the Licensee). Such monies may be deducted from the payment in special condition 3 but if no payment is required to be made by the Licensor under special condition 3 then the Licensee must pay the Licensor within 14 days of demand.

9. RETAIL AND COMMERCIAL LEASES ACT

The Licensee undertakes to the Licensor that they will not do any act or thing to cause or allow the Retail and Commercial Leases Act 1995 (SA) to apply to this Licence.

10. OTHER

- 10.1 On or before 30 April each year during the Term, the licensee will provide the following documentation for the upcoming festival:
- (a) Power Plan;
 - (b) Draft Event Program;
 - (c) Site Plan;
 - (d) Liquor Licence;
 - (e) Security Plan;
 - (f) Resident Notification;
 - (g) Bump in schedule;
 - (h) Waste management Plan (must include 3 bin system);
 - (i) WHS Policy;
 - (j) High Risk Work Contractor Induction (if applicable);
 - (k) Emergency Management Plan inc. First Aid and Emergency;
 - (l) Services Access/Egress Map;
 - (m) Food Permit.
- 10.2 In consideration of the Licence Fee, the Licensor will not charge the Licensee the usual event costs, comprising site fees, bond, irrigation markup, city power, temporary parking controls and traffic management.
- 10.3 The Licensee must comply with all of the Licensor's Terms and Conditions for events from time to time, and published on the Licensor's website, and the Licensee will be recognised as the 'Event Organiser' as defined within the Terms and Conditions.

- 10.4 The Licensee will ensure that smoking is not permitted on the Premises.
- 10.5 The Licensor and Licensee will meet weekly at the Licensor's Council Chambers (at 24 Brighton Road, Brighton or such other location as agreed by the parties) two weeks before the Trading Period and throughout the Trading Period to ensure clear and transparent lines of reporting along with regular review of the park Licence Area stewardship.
- 10.6 The Licensee is responsible for all costs in connection with caretaking and security services in respect of the Premises.
- 10.7 The Licensee must leave the Premises in a clean and tidy state at the end of each use.
- 10.8 Except approved by the Licensor, the Licensee must not under any circumstances allow alcohol onto the Land and must ensure that its patrons, members and visitors do not bring alcohol onto the Land except as otherwise permitted by the Licensor.
- 10.9 Within 30 days following each Trading Period during the Term, the Licensee will provide the Licensor with a post-event report which will include the following information:
 - (a) site visitation numbers on each day, and total ticket sales;
 - (b) postcode data of ticket purchases and summary of any other demographic information collected at point of purchase (to the extent provided to the Licensor);
 - (c) profit and loss statement which includes a breakdown of direct and indirect costs of event delivery;
 - (d) details of any local businesses engaged by the Licensee (those business operating on Jetty Road, Glenelg and within the City of Holdfast Bay council area);
 - (e) Selection of event images and footage that can be used for the Licensor's future promotional purposes.

STANDARD LICENCE TERMS

- 1.1 **Definitions**
- 1.1.1 In this licence, unless the context otherwise requires:
- 1.1.2 **Authority** means any governmental, semi-governmental or other authority having jurisdiction or authority in respect of the Premises;
- 1.1.3 **Commencement Date** means the date in **Item 3**;
- 1.1.4 **Expiry Date** means the date in **Item 4**;
- 1.1.5 **Default Rate** means the rate which is 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 highest of those rates;
- 1.1.6 **Land** means the land described in **Item 1**;
- 1.1.7 **Licence Fee** means the fee in **Item 5**;
- 1.1.8 **Licensee's Agents** means each of the Licensee's agents, contractors, subcontractors, employees, officers, sublessees, licensees, invitees, or any other person claiming through or under the Licensee;
- 1.1.9 **Licensee's Share** means the proportion specified in **Item 9**;
- 1.1.10 **Licensor's Agents** means each of the Licensor's agents, contractors, subcontractors, employees, officers, sublessees, licensees (excluding the Licensee or the Licensee's Agents), invitees, or any other person claiming through or under the Licensor;
- 1.1.11 **Outgoings** means the outgoings described in **Item 8**;
- 1.1.12 **Permitted Use** means the use described in **Item 10**;
- 1.1.13 **Premises** means the premises described in **Item 2**;
- 1.1.14 **Renewal Term** means the term (if any) of renewal or extension specified in **Item 13**;
- 1.1.15 **Review Date** means the dates in **Item 6**;
- 1.1.16 **Schedule** means the schedule attached to this licence;
- 1.1.17 **Services means** electricity, gas, water, oil, telephone and other like services together with the services described in **Item 7**;
- 1.1.18 **Term** means the period of 141 calendar days commencing on the Commencement Date and expiring on the Expiry Date and (non-cumulative) strictly during the periods of the Times of Use;
- 1.1.19 **Times of Use** means the times set out in **Item 11**;

1.2 General

In this licence, unless the context otherwise requires:

- 1.2.1 a reference to any document is a reference to that document as varied, novated or replaced from time to time;
- 1.2.2 the singular includes the plural and vice versa;
- 1.2.3 a reference to a gender includes all genders;
- 1.2.4 the use of the word "including" does not limit what else might be included;
- 1.2.5 a reference to a thing includes all or any part of it;
- 1.2.6 where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- 1.2.7 a reference to a person or entity includes a natural person, a partnership, corporation, trust, association, unincorporated body, authority or other entity;
- 1.2.8 a reference to a party includes that party's legal personal representatives, successors and permitted assigns;
- 1.2.9 a term which purports to bind or benefit two or more persons binds or benefits them jointly and severally;
- 1.2.10 headings are inserted in this document for convenience only and are not intended to affect its interpretation;
- 1.2.11 a reference to a statute, ordinance, code or other law includes regulations and other instruments issued under it and consolidations, amendments, re-enactments or replacements of any of them; and
- 1.2.12 a reference to an Item means an Item in the Schedule.

2. GRANT OF LICENCE

The Licensor grants to the Licensee an exclusive licence to use the Premises for the Permitted Use and during the Times of Use. The Licensor will permit the Licensee and the Licensee's Agents access for the purpose of ingress and egress to and from the Premises without hindrance over across and along all such parts of the Land as are reasonably necessary to access the Premises.

3. TERM

This licence commences on the Commencement Date and continues until the Expiry Date or the prior surrender or termination of this licence.

4. LICENCE FEE

- 4.1 The Licensee must pay to the Licensor or as the Licensor directs the Licence Fee without demand, set-off, counterclaim, withholding or deduction in advance on the Commencement Date and each anniversary of that date in accordance with Item 5.
- 4.2 The Licence Fee will be reviewed on each Review Date in the manner described in Item 12.
 - 4.2.1 Until the new licence fee has been determined, the Licensee must continue to pay the licence fee paid before the Review Date.
 - 4.2.2 Any variation in the licence fee takes effect on the Review Date and within fourteen (14) days of determination the Licensor must refund any overpayment or the Licensee must pay any shortfall.

5. SERVICES

The Licensee must pay charges for all Services supplied by any Authority to the Licensee.

6. OUTGOINGS

- 6.1 The Licensee must pay or reimburse to the Licensor, or as the Licensor directs, the Licensee's Share of all Outgoings levied, charged or assessed in respect of the Premises or the Land.
- 6.2 The Outgoings will be adjusted between the Licensee and the Licensor as at the date of commencement, expiry or termination (as the case may be) and the Licensor's proportion will be so much of any Outgoing that is referable to any period of time not included in the Term of this licence.

7. POWER AND OTHER UTILITIES

- 7.1 The Licensee must pay as and when they are due for payment, all costs for the use of telephone, light and other facilities and the consumption of electricity, gas, water and any and all other services and utilities supplied to or used from the Premises.
- 7.2 If there is no separate meter for recording or measuring the services and utilities consumed on or from the Premises, then the Licensee must, if required by the Council, install the necessary meters at its own cost.
- 7.3 Without limiting the generality of this clause 7, the Licensee will comply in all respects with the *Electricity (General) Regulations 2012* (SA) and any other applicable electricity laws.

8. PERMITTED USE

- 8.1 The Licensee must only use the Premises for the Permitted Use and during the Times of Use.
- 8.2 The Licensee must:
 - 8.2.1 not carry on any offensive or dangerous activities on or from the Premises;
 - 8.2.2 not create a nuisance or disturbance for the Licensor or for the owners or occupiers of any adjoining property; and
 - 8.2.3 ensure at all times that activities conducted on or from the Premises do not discredit the Licensor.

9. LICENSOR'S RIGHTS AND OBLIGATIONS

- 9.1 Subject to the Licensor's rights and to the Licensee complying with the Licensee's obligations under this licence, the Licensee may occupy the Premises during the Times of Use during the Term without interference from the Licensor.
- 9.2 The Licensor may enter the Premises at any time and without notice for any purpose including inspection or to carry out maintenance, repairs or building work.

10. LICENSEE'S OBLIGATIONS

The Licensee must at its cost:

- 10.1 obey any law that requires the Licensee to do, or to refrain from doing anything concerning the Premises, the Licensee's use of the Premises, or this licence;
- 10.2 obtain and keep current all consents, authorities, permits and licences necessary for the lawful conduct of the activities conducted by the Licensee in the Premises;
- 10.3 ensure that the Premises are used carefully and responsibly and in accordance with any directions that may be given by the Licensor from time to time.
- 10.4 immediately repair or make good any damage to the Land and/or the Premises which caused or contributed by the Licensee.
- 10.5 only use the Premises for the Permitted Use specified in the Schedule;
- 10.6 keep the Premises clean and tidy and free from animals, vermin and pests (excepting those permitted by law including service dogs provided that the Licensee's conditions of entry are complied with);
- 10.7 comply with all laws, requirements and reasonable directions of the Licensor in relation to occupational health and safety, public health, fire safety and safety generally
- 10.8 comply with all laws relating to:
 - 10.8.1 the Licensee's use and occupation of the Premises;
 - 10.8.2 the Permitted Use.
- 10.9 obtain the Licensor's consent before the Licensee alters, installs any equipment or signage, re-designs the Premises or does any other building work in or on the Premises;
- 10.10 comply with the reasonable rules, requirements and directions of the Licensor regarding the use of the Premises and the Land;
- 10.11 following each Time of Use the Licensee must remove all rubbish and other items brought onto the Premises, and promptly make good any damage caused by the Licensee;
- 10.12 upon the expiration or earlier cancellation of this licence:
 - 10.12.1 return all keys for the Premises provided to the Licensee; and
 - 10.12.2 make good any damage it caused to the Premises during the Term.

11. RISK AND INSURANCES

- 11.1 The Licensee must effect and keep current during the Term the insurance policies specified in Item 14.

11.2 The Licensee must:

- 11.2.1 in respect of the public liability insurance policy, include the Licensor as an interested party on the policy of insurance;
- 11.2.2 whenever the Licensor asks, give the Licensor a copy of each insurance policy or a certificate of currency for the insurance; and
- 11.2.3 notify the Licensor immediately if any such policy is cancelled or an event occurs which may allow a claim or affect rights under the policy.

11.3 The Licensee occupies and uses the Premises at the Licensee's own risk.

12. RELEASE AND INDEMNITY

12.1 The Licensee indemnifies the Licensor and the Licensor's Agents against any action or demand due to any damage, loss, injury or death caused or contributed to by:

- 12.1.1 the Licensee's act, omission, default or negligence;
- 12.1.2 the Licensee's use or occupation of the Premises and/or the Land;
- 12.1.3 any breach of this licence by the Licensee;
- 12.1.4 damage to property or injury or death to any person; or
- 12.1.5 any fire on or from the Premises, and the overflow or leakage of water or any other harmful substance or thing into or from the Premises.

12.2 The Licensee indemnifies the Licensor against any action or demand due to any damage, loss, injury or death caused or contributed to by the Licensor doing anything which the Licensee must do under this licence, but has not done or has not done properly.

12.3 Each indemnity in this clause is independent from the Licensee's obligations under this licence and does not end when this licence ends.

12.4 The Licensee releases the Licensor and the Licensor's Agents from, and agrees that the Licensor and the Licensor's Agents will not be liable for liability or loss arising from, or costs incurred in connection with:

- 12.4.1 damage, loss, injury or death; and
 - 12.4.2 anything the Licensor is permitted or required to do under this licence,
- except to the extent that the Licensor causes this by a negligent act or negligent omission.

13. BREACH

13.1 The Licensee breaches this licence if:

- 13.1.1 the Licence Fee or any part of it is unpaid, it disobeys or otherwise fails to perform any term of this licence and such noncompliance continues for a period of fourteen (14) days following service of a written notice of such default; or
- 13.1.2 an order is made or a resolution passed that the corporation be wound up;

- 13.1.3 an order is made or a meeting is called for the appointment of a provisional liquidator, a liquidator or an administrator to the Licensee;
 - 13.1.4 an administrator, a receiver, a manager or an inspector is appointed in respect of the Licensee or any of the assets of the Licensee;
 - 13.1.5 the Licensee is insolvent within the meaning of the Corporations Act 2001 (Cth); or
 - 13.1.6 execution is levied against the Licensee and is not discharged within one (1) calendar month.
- 13.2 If the Licensee is in default of this licence under clause 13.1 then Licenser may, without prejudice to any other right it has, terminate this licence and re-enter the Premises without further notice to the Licensee.

14. RENEWAL

- 14.1 If a right of renewal has been granted to the Licensee as described in Item 13 and the Licensee wishes to exercise that right of renewal, then the Licensee must serve a written notice on the Licenser not less than 6 and not more than 12 months before the expiry of the then current term stating it requires a renewal of this Licence.
- 14.2 The Licensee will not be entitled to a right of renewal if:
- 14.2.1 the Licensee has been in breach of this Licence at any time before giving notice of the Licensee's exercise of the right of renewal;
 - 14.2.2 the Licensee is in breach of the Licence at the time of giving that notice; or
 - 14.2.3 the Licensee is in breach or commits a breach of this Licence after giving notice but before commencement of the Renewal Term.

15. NATURE OF LICENCE

- 15.1 The rights under this licence rest in contract only and do not create in or confer upon the Licensee any tenancy or any estate or interest in the Premises.
- 15.2 The rights granted shall not confer upon the Licensee or any person claiming through or under the Licensee any rights of exclusive occupation.

16. ADDITIONAL CONDITIONS

The Licenser and the Licensee acknowledge and agree that the additional conditions described in **Item 15** will apply to this licence and to the extent that there is any inconsistency between the terms of this licence and these additional conditions, the additional conditions will prevail.

17. GST

- 17.1 For the purposes of GST levied or imposed on or in respect of any supply by the Licenser to the Licensee made under this licence, the amount payable for that supply will be increased by the amount necessary to ensure that the payment made by the Licensee net of GST is the same as

it would have been before the GST was levied or imposed and the Licensee must pay that amount as increased.

- 17.2 Words or expressions used in this licence, which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), have the same meaning in this licence.

18. INTEREST ON OVERDUE AMOUNTS

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

19. MISCELLANEOUS

- 19.1 The Licensors and the Licensee acknowledge and agree that this Licence and the Lease contain and represent the entire agreement reached between them with regard to the Land and that no promises, representations or undertakings, other than those contained in this licence, were made or given or relied upon.
- 19.2 The Licensors make no warranty or representation regarding the suitability of the Premises (structural or otherwise) for the Permitted Use or any other purpose.
- 19.3 If any part of this licence is found to be invalid or void or unenforceable, then that part will be severed from this licence and the remainder of this licence will continue to apply.
- 19.4 Each party will pay its own costs and expenses in relation to the negotiation, preparation and execution of this licence.
- 19.5 The Licensee must pay all stamp duty (if any) assessed or chargeable in respect of this licence.
- 19.6 In addition to any other means of giving notice, any notice will be taken to have been given if it is in writing and signed by or on behalf of the party giving the notice and either delivered or sent by ordinary pre-paid post to the other party at the address set out in this licence or such other address as may be advised in writing. A notice will be taken to have been given at the time of delivery or on the day following the date of posting (whether actually received or not).
- 19.7 This licence is governed by the laws of South Australia. The parties submit to the jurisdiction of the courts of South Australia and agree to issue any proceedings relating to this licence in those courts.
- 19.8 Every provision of this licence is independent of the other. Any provision which is prohibited or unenforceable in any jurisdiction will be ineffective to the extent only of such prohibition or unenforceability, and the other provisions will remain in force.
- 19.9 Any variation of this licence must be in writing and signed by each party.
- 19.10 Unless otherwise stated, the Licensors may in its discretion give (conditionally or unconditionally) or withhold any approval or consent under this licence.

EXECUTED as an agreement

IMPORTANT NOTICE

EXCLUSION OF WARRANTY OF FITNESS FOR PURPOSE

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

Licensor

THE COMMON SEAL of CITY OF HOLDFAST BAY was affixed in the presence of:

.....
Signature of Mayor

.....
Signature of Chief Executive Officer

.....
Name of Mayor (print)

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

Licensee

EXECUTED by GLUTTONY FOOD AND WINE PTY LTD in accordance with section 127(1) of the
Corporations Act 2001 (Cth) by:

.....
Signature of Director

.....
Signature of Director

.....
Name of Director (print)

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

ANNEXURE A

