

Lease Agreement

Airport Over 50's Clubroom (Coast Watchers Park, Fulham, SA)

Schedule

Council	City of West Torrens ABN 16 346 877 634 of 165 Sir Donald Bradman Drive, Hilton SA 5033, and includes all employees, agents, contractors and other invitees of the Council. Contact Person: Dean Ottanelli Email: info@wtcc.sa.gov.au Phone: (08) 8416 6333
Club	Airport Over 50's Club Incorporated of Coast Watchers Park, Fulham South Australia 5024 and includes all users, agents, contractors, patrons and other invitees of the Club. Contact Person: Secretary Email: secretary@airportover50club.org.au Phone: (08) 8353 5101
Clubroom	Legal description: Portion of the land comprised in Certificate of Title Volume 3856 Folio 114) being the area outlined in red on the aerial plan attached at Annexure B and it includes all improvements, fixtures, fittings and services on the land. Address: Coast Watchers Park, Fulham, South Australia 5024
Initial Lease Period	Ten (10) years commencing on [TBI] (Commencement Date) and expiring at midnight on [TBI].
Renewal Period	Ten (10) years
Operating Hours	Scheduled programs and activities of the Club may only be held and run from the Clubroom during the following Operating Hours: • Mondays to Fridays 7:00am until 11pm; • Saturdays 8:00am until 12 midnight; and • Sundays 8:00am until 11:00pm, and on such other days and at such other times as may be approved by the Council from time to time in writing (with such approval not to be unreasonably withheld or delayed).
Permitted Use	Recreational, social, educational and fellowship/membership activities, community events including temporary hire of the Clubroom (in accordance with clauses 34-37(inclusive) and other related activities for the benefit of the Club and senior citizens in the local area and any other activities that are approved by the Council (such approval not to be unreasonably withheld or delayed).
Fee	\$1.00 per annum (exclusive of GST) payable in advance on each anniversary of the Commencement Date.

DATE

PARTIES

City of West Torrens of 165 Sir Donald Bradman Drive, Hilton SA 5033

AND

Airport Over 50's Club Incorporated of Coast Watchers Park, Fulham South Australia 5024.

BACKGROUND

- A. The background to the granting of this lease is set out in Annexure A. The background is not a binding part of this lease, but both parties acknowledge it is an accurate reflection of the history and use of the **Clubroom** since 1982 and that it contains information that demonstrates the nature of past arrangements between the parties in respect of the use of the **Clubroom** and the collaborative relationship that the **Council** and the **Club** have had.

TERMS AND CONDITIONS

DEFINITIONS

Words that are in **bold** in the Background and these lease Terms and Conditions have the meaning given to them in the Schedule.

Lease Period means the **Initial Lease Period**, the **Renewal Period** and any period during which the **Club** holds over or continues to use the **Clubroom** with the **Council's** consent.

GRANT OF LEASE

GRANT OF LEASE

1. The **Council** grants to the **Club** a lease over the **Clubroom** for the **Lease Period** as set out in this lease agreement.
2. The **Club** may also make reasonable use of the access road and car park areas adjacent the **Clubroom** in connection with their use of the **Clubroom** (in common with other users).
3. The **Council** has agreed to grant this lease on the conditions set out in this lease document, and specifically those that ensure the **Club** makes adequate use of the **Clubroom** which is a community asset.

CLUB'S RIGHTS, RESPONSIBILITIES AND OBLIGATIONS

CONDITIONS APPLYING TO THE USE OF THE CLUBROOM

4. The **Club**:
 - a. May only use the **Clubroom** for the **Permitted Use**. The **Club** may not use the **Clubroom** for any other purpose; and
 - b. Must ensure that the **Clubroom** is safe for use prior to each occasion on which it is to be used.
5. The **Club** may only schedule and run activities from the **Clubroom** during the **Operating Hours** and on such other days and at such other times as may be approved by the Council from time to time in writing (with such approval not to be unreasonably withheld or delayed).
6. The **Club** must ensure that the **Clubroom** is used in a manner so as not to cause any offense to, or create a nuisance or disturbance for, other people who occupy or own nearby premises.
7. The **Club** must use all facilities and services within the **Clubroom** in a proper and safe manner and only in the manner in which they are intended to be used.
8. The **Club** must not, without the prior written consent of the **Council** (which consent will not be unreasonably withheld or delayed):
 - a) make any changes, additions or connections to any electrical, plumbing, networking or other technical installations within the **Clubroom**; or
 - b) unless required in connection with the **Permitted Use** of the **Club** under this lease, allow a dangerous substance or hazardous material to be brought into the **Clubroom**.
9. The **Club** must ensure that the **Clubroom** is secure and locked when not in use.

FEE

10. The **Club** must pay the **Fee** to the **Council** for its use of the **Clubroom** at the times and in the manner set out in the **Schedule**.

UTILITIES AND SERVICES

11. The **Club** must pay to the relevant services provider when due all charge for the supply and consumption of electricity, gas, telephone, internet and all other services and utilities supplied to and used at the **Clubroom** (except water supply and usage charges or any other rates and taxes payable in respect of the **Clubroom**).

INSURANCE

12. The **Club** must keep current during the **Lease Period** in connection with the **Clubroom**:
- a) a policy of public risk insurance for the amount of \$20,000,000 per claim (or other such amount as required by the Local Government Mutual Liability Scheme) and unlimited in the aggregate; and
 - b) a policy of insurance in respect of the **Club's** equipment that the **Club** has brought onto or keeps in the **Clubroom** for its full replacement value.
13. Each policy of insurance to be maintained by the **Club** pursuant to clause 12, must:
- a) be with an insurer and with respect to the policy of insurance specified in clause 12 a), note the interest of **Council (where applicable)**;
 - b) note and cover the insurable indemnities provided by the **Club** to the **Council** pursuant to this lease;
 - 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 **Council**, the **Club's** policies will be primary policies.
14. On or before the commencement of the **Lease Period**, the **Club** must give the **Council** a copy of the certificate(s) evidencing the currency of all policies required to be maintained by the **Club** pursuant to clause 12.
15. The **Club** must use its reasonable endeavours not to do or omit to do anything which may void any policy of insurance taken out in respect of the **Clubroom**.

GOODS & SERVICES TAX (GST)

16. If the **Council** is liable to pay GST (within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)) in connection with a supply under this lease then:
- a) the consideration for that supply is exclusive of GST;
 - b) the **Council** may increase the consideration or the relevant part of the consideration by the applicable GST rate; and
 - c) the **Club** must pay the increased consideration on the due date for payment by the **Club** of the consideration.
17. Where the consideration is increased under clause 17, the **Council** must, on or before the date on which the consideration is payable, issue a tax invoice to the **Club**.

RISK

18. The **Club** agrees:

- a) to use the **Clubroom** at the **Club's** own risk;
- b) the **Council** has given the **Club** no warranty that the **Clubroom** is suitable for the **Permitted Use**;
- c) to release the **Council** from any claims that the **Club** may have against the **Council** for loss, damage, injury or death suffered or incurred as a result of the **Club's** use of the **Clubroom** provided that the **Council** shall not be released from any claims to the extent that the loss, damage, injury or death was caused by the negligent act or omission of the **Council** or breach of this Lease by the **Council**; and
- d) to indemnify the **Council** against all claims that are made against the **Council** for loss, damage, injury or death caused or contributed to by the **Club's** use of the **Clubroom** or any breach by the **Club** of this lease, except to the extent caused or contributed to by the negligent act or omission of the **Council** or breach of this Lease by the **Council**.

COMPLIANCE WITH LAW

19. The **Club** must comply with all relevant legislation (including any by-laws of **Council**) and all lawful conditions, requirements, notices and directives issued or applicable under any such legislation or by any statutory authorities in respect of its use of the **Clubroom**.

ALCOHOL

20. If the **Club** permits a person to sell, supply or allow the consumption of alcohol at the **Clubroom**, the **Club** must ensure compliance with the *Liquor Licensing Act 1997* (SA).

NO GAMING MACHINES

21. The **Club** must not install or operate gaming machines at the **Clubroom**.

SMOKING

22. The **Club**, including the **Club's** users, agents, contractors, patrons and other invitees, must not smoke within the **Clubroom** or outside the **Clubroom** except in any specifically designated outside smoking areas.

INSTALLATION OF STRUCTURES

23. The **Club** must not, without the prior written consent of the **Council** (which consent will not be unreasonably withheld or delayed):

- a) affix any permanent fixtures or fittings to the **Clubroom**, or deface or damage the interior or exterior of the **Clubroom** or any part of it;
- b) suspend any permanent object from any ceiling or roof structure within the **Clubroom**;
- c) install, erect or affix any signs, banners or structures on the exterior of the **Clubroom**;

24. The **Club** must remove and take down any installations, structures, signs, banners or other like objects installed by the **Club** during the Lease Period, immediately prior to the end of this lease.
25. The **Club** must not make any other alterations or additions to the interior or exterior of the **Clubroom** without the **Council's** prior written consent.

REPAIR OF DAMAGE

26. The **Club** must notify the **Council** promptly of any damage to, or defect in, the **Clubroom** of which the **Club** becomes aware (and the **Club** must use its reasonable endeavours to keep itself informed of all damage to or defect in the **Clubroom**).
27. The **Club** will within 30 days of written demand reimburse to the **Council** the reasonable and properly incurred costs of the **Council** to repair any damage to the **Clubroom** caused by any wrongful act, negligence or default of the **Club** (excluding fair wear and tear) provided that the **Club's** obligations under this clause 27 will not apply to the extent that the **Council** has received compensation for such damage under any policy of insurance.

CLEANING

28. The **Club** must regularly clean the **Clubroom** and also ensure that the **Clubroom** is left clean and tidy and free from rubbish at the end of each occasion that the **Clubroom** is used and also at the end of the **Lease Period**.

CLUB'S FURNITURE AND EQUIPMENT

29. The **Club** must maintain its own furniture and equipment in good repair so that the **Club** is able to continue to use the **Clubroom** for the **Permitted Use**.

CONSUMABLES

30. The **Club** must supply all consumables required at the **Clubrooms**.

FIRE PRECAUTIONS

31. The **Club** must comply with all law and regulations in relation to fire safety at the **Clubroom** provided that nothing in this clause shall oblige the **Club** to do work of a structural or capital nature.

ENVIRONMENTAL MANAGEMENT

32. The **Club** must adopt practices that seek to minimise energy and water use by the **Club** at the **Clubroom** and reduce waste from the **Clubroom** going to landfill. To this end, the **Club** must adopt any practices reasonably requested by the **Council** aimed at more environmentally sustainable practices at the **Clubroom**.

NO TRANSFER

33. This lease is personal to the **Club** and the **Club** cannot and must not transfer this lease or the **Club's** rights to use the **Clubroom** to any other person.

HIRING OUT

34. The **Club** may during the **Lease Period**, hire out the **Clubroom** to members of the community, community groups and providers of services to senior citizens, subject to the terms and conditions of this lease and for use consistent with the **Permitted Use**.

35. The **Club** must not:

- a) hire out, permit or suffer any person to use the **Clubroom** for a business purpose or any purpose that would attract the application of the *Retail and Commercial Leases Act 1995* without the prior written consent of the **Council** (which consent will not be unreasonably withheld or delayed);
- b) hire out, permit or suffer any person to use the **Clubroom** for residential purposes;
- c) where the **Clubroom** is hired out on a regular basis (including weekly and monthly) to one user, allow that user to use the **Clubroom** for a period of more than 24 hours on any one occasion; or
- d) allow the **Clubroom** to remain unused for a continuous period of one month or more provided that the **Council** and the **Club** acknowledge and agree this clause 36(d) will not apply:
 - i. between the period commencing on 1 December in a calendar year and expiring on 31 January in the immediately following calendar year during the term of this lease; or
 - ii. in circumstances where the **Club** is unable to access or use the **Clubroom** due to a government mandated shutdown of the **Clubroom** which is required at law (including without limitation in connection with COVID -19).

For the purposes of this clause 36, "**COVID-19**" means the pandemic relating to COVID-19 and any mutations or strains of that coronavirus and includes a reference to any other infectious disease which is declared as a pandemic by the World Health Organisation and governments around the world, including by Authorities in Australia.

36. The **Club** is entitled to keep all fees charged for the hiring out of the **Clubroom** provided that those fees must be applied to the management and operation of the **Clubroom**.

37. The **Club** must not sublease the **Clubroom** or any part of it.

REPORTING

38. The **Club** must provide to the **Council** any information reasonably requested by the **Council** in relation to the **Club's** use of the **Clubroom** and the **Club's** membership and finances provided that such request cannot be made by the **Council** more than once in any 12 month period or where reasonably practicable given the exceptional circumstances of the time.

RENEWAL

39. The **Club** may renew this lease for the **Renewal Period** if the **Club** gives the **Council** a written notice stating that the **Club** wishes to renew this lease between three and six months before the expiry of the **Initial Lease Period** and this lease will then be renewed for the **Renewal Period** on the terms of this lease except this clause 39 commencing immediately after the end of the **Initial Lease Period**.

40. The **Club** will not be entitled to renew this lease if:

- a) it has been in breach of this lease at any time before, during or after the **Club** gives notice under clause 39 and such breach has not been remedied by the **Club** (provided that the Council has given no less than 60 days prior written notice to the **Club** of any such breach);
- b) the committee of management of the **Club** have not met for more than 12 months prior to the **Club** giving notice under clause 39;
- c) the **Club** ceases to be an incorporated association; and/or
- d) the **Club** has not provided any services or activities at the **Clubroom** in accordance with the **Permitted Use** for more than 6 months prior to the **Club** giving notice under clause 39.

END OF LEASE

41. This lease expires at midnight on the last day of the **Lease Period** unless it is terminated earlier by the **Council** or the **Club**.

42. Before this lease comes to an end, the **Club** must remove any improvements made to the **Clubroom** by the **Club** that were not approved by the **Council** and repair any damage to the **Clubroom** caused by such removal provided that the **Club** is not obliged to reinstate or make good any damage or disfigurement to the **Clubroom** to a condition better than the condition which existed at the Commencement Date or any upgrade date, and in any event any obligation to make good or reinstate the **Clubroom** is subject to fair wear and tear.

43. At the end of the **Lease Period**, the **Club** must ensure that the **Clubroom** is left in a clean and tidy condition, including appropriately disposing of all rubbish and removing all of the **Club's** personal property, loose items and equipment from the **Clubroom**. If any personal property, loose items and equipment are left at the **Clubroom** then the **Council** may deal with and dispose of those goods and equipment as it sees fit.

44. The **Club** must vacate the **Clubroom** on the expiry of the **Lease Period** or earlier termination date of this lease, unless the **Club** has been granted an extension or new lease to continue to use the **Clubroom** or is entitled to hold over under clause 61.

SOCIAL MEDIA

45. The Management Committee of the **Club** must not use any form of social media (including but not limited to the **Club's** website and e-newsletters, Facebook, Twitter and Instagram) in a way that discredits or could discredit the **Council**.

COUNCIL'S RIGHTS, RESPONSIBILITIES AND OBLIGATIONS

COUNCIL'S RIGHT TO ENTER

46. The **Council** may enter the **Clubroom** at reasonable times and for the purposes of inspection and undertaking works after providing not less than 7 days' prior written notice to the **Club** provided that the entry of the **Council** (where reasonably practicable) must be undertaken in the presence of an authorised representative of the **Club** (which presence will not be refused or delayed).

47. The **Council** may enter the **Clubroom** without notice in an emergency.

WORKS, MAINTENANCE AND REPAIR

48. The **Council** may undertake works to the **Clubroom** and may interrupt services for any reasonable period while doing so. The **Council** will use reasonable endeavours to minimise disruption to the **Club's** use of the **Clubroom** when undertaking such works.

49. The **Council** will, at its cost and expense:

- a) keep the **Clubroom** in a watertight, weatherproof and structurally safe and sound condition;
- b) undertake all repairs and maintenance required to the **Clubroom** including those of a capital or structural nature.

GARDENING

50. The **Council** will ensure that garden areas immediately adjacent to the **Clubroom** are kept in a clean and tidy condition.

GUTTERS

51. The **Council** will keep the gutters of the **Clubroom** clear of debris.

BUILDING INSURANCE

52. The **Council** must maintain building insurance for the **Clubroom**.

WATER CHARGES

53. The **Council** must pay when due for payment all water supply and usage charges in respect of the **Clubroom**.

RATES AND TAXES

54. The **Council** must pay when due for payment all rates and taxes in respect of the **Clubroom**.

AIR- CONDITIONING

55. The **Council** must service and repair (when required) the air-conditioning systems at the **Clubroom** and replace such air-conditioning systems or any component thereof which may come to the end of its economic or useful life.

FIRE SAFETY EQUIPMENT

56. The **Council** must provide fire safety equipment for the **Clubroom** and regularly inspect that equipment in compliance with all relevant laws.

BUILDING SECURITY

57. The **Council** must ensure that the **Clubroom** is fitted with locks and/or other security mechanism to enable the **Clubroom** to be secured when not in use.

MISCELLANEOUS AGREED TERMS

EARLY TERMINATION

58. The **Council** may terminate this lease on not less than 6 months' prior written notice to the **Club** if:
- a) the committee of management of the **Club** have not met for more than 12 months;
 - b) the **Club** ceases to be an incorporated association;
 - c) the **Club** does not provide any services or activities at the **Clubroom** in accordance with the **Permitted Use** for more than 6 months;
 - d) the **Council** requires vacant possession of the **Clubroom** for a re-development proposal; and/or
 - e) if the **Council** receives notice of resumption or acquisition of the **Clubroom** (or any part of it).
59. Where the **Council** terminates this lease pursuant to clause 58(d) the **Council** will use reasonable endeavours to relocate the **Club** to new premises (subject to availability, applicable legislative requirements and the **Council** and the **Club** agreeing the terms of a new lease agreement for the new premises on similar terms as this lease (as applicable)).
60. The **Club** may terminate this lease on not less than 6 months' written notice to the **Council** where the **Club** no longer wishes to use the **Clubroom** for the **Permitted Use**.

HOLDING OVER

61. If, with the **Council's** consent, the **Club** continues to use the **Clubroom** after the end of the lease, the **Club** does so under a monthly lease which:
- a) either party may terminate on one month's notice given at any time; and
 - b) is on the same terms as this lease.

AMENDMENTS

62. No alterations or amendments to this lease will be valid unless they are in writing and signed by the **Council** and the **Club**.

DAMAGE OR DESTRUCTION

63. If the whole or any part of the **Clubroom** is damaged or destroyed and as a result, the **Clubroom** is unusable or inaccessible at any time during the **Lease Period** then the **Council** or the **Club** may, by written notice to the other party, terminate this lease with immediate effect.

64. Where this lease is terminated pursuant to clause 63 the **Council** will use its best endeavours to relocate the **Club** to new premises (subject to availability, applicable legislative requirements and the **Council** and the **Club** agreeing the terms of a new lease agreement for the new premises on similar terms as this lease (as applicable)).

BREACH

65. If the **Club** breaches any provision of this lease and fails to remedy the breach within 60 days after being requested in writing to do so, the **Council** may terminate this lease with immediate effect by notice in writing to the **Club**.

66. The **Council** may, at the **Club's** cost, do anything which the **Club** should have done under this lease but which the **Club** has not done or which the **Council** reasonably considers the **Club** has not done properly provided that the **Club** has failed to remedy the breach within 60 days after being requested in writing to do so.

67. The **Council's** powers and/or rights at law are not limited by its rights under this lease.

68. A notice under section 10 of the *Landlord and Tenant Act 1936* (SA) must allow 20 days for the **Club** to remedy a breach of this lease if it is capable of remedy and to make reasonable compensation in money to the satisfaction of the **Council**.

GOVERNING LAW

69. This lease is governed by the laws in South Australia.

ENTIRE AGREEMENT

70. This lease constitutes the entire agreement between the parties about the **Clubroom** and supersedes any prior understanding, agreement, condition, warranty, indemnity or representation about the **Clubroom**.

WAIVER

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

EXERCISE OF POWER

72. The failure, delay, relaxation or indulgence by a party in exercising a power or right under this lease is not a waiver of that power or right. An exercise of a power or right under this lease does not preclude a further exercise of it or the exercise of another right or power.

NOTICES

73. A notice, demand, consent, approval or communication under this lease (**Notice**) must be in writing, in English and signed by a person authorised by the sender. Without limiting any other method, Notice is sufficiently given if sent by electronic communication to the email address of a party detailed in the Schedule (unless a party has been notified of an updated email address for Notices by the other party).

74. Notice sent by electronic mail is deemed to be received at the time and on the day shown in the sender's electronic mail delivery report if the sender does not receive a message from the system operator to the effect that the relevant electronic mail was undeliverable.

INTERPRETING THIS LEASE

75. In this lease:

- a. headings do not affect interpretation;
- b. singular includes plural and plural includes singular;
- c. a reference to a party includes its executors, administrators and successors;
- d. a reference to this lease includes the Annexure B plan of the Clubroom;
- e. a reference to any document (including this lease) is to that document as varied, novated, ratified or replaced from time to time;
- f. a provision is not construed against a party only because that party drafted it;
- g. an unenforceable provision or part of a provision may be severed, and the remainder of this lease continues in force; and
- h. the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions.

EXECUTED as an agreement

**The common seal of CITY OF WEST
TORRENS** was affixed in the presence
of:

.....
Signature of Mayor

.....
Signature of Chief Executive Officer

.....
Name of Mayor (print)

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

**The common seal of AIRPORT OVER
50'S CLUB INCORPORATED** was
affixed in the presence of:

.....
Signature of President / Vice-President
(Please delete as applicable)

.....
Signature of Executive Committee Member

.....
Name (print)

.....
Name (print)

Annexure A Background Information

1. In 1981 the predecessors of the current Council established a new facility for the use of senior citizens.
2. Federal Government, State Government and Council funding was made available for the development of this new facility, which was completed to form the Clubroom.
3. The Clubroom is owned by the Council and has been operated and managed by the Club since the facility was completed in 1982. The Club was established during 1982 by a committee of local ratepayers as arranged and supported by the then Town Clerk and Mayor of the Council.
4. Since the Clubroom was completed, the Club has been operating as a not-for-profit incorporated body and managing the provision of activities from the Clubroom for the benefit of local senior citizens.
5. The Clubroom:
 - 5.1. provides opportunities for persons over 50 to remain physically and mentally active; and
 - 5.2. promotes and maintains very important social networks amongst this age cohort, whilst supporting Council policies for the benefit of senior citizens who are residents and ratepayers in the local community.
6. The Club, through its volunteer committee and members, has been highly successful in providing a range of Club activities which have been highly beneficial and much appreciated by its members (predominantly elderly ratepayers from the City of West Torrens). Activities provided by the Club have catered almost exclusively for senior citizens and their special needs.
7. The Council has supported and encouraged the Club and its use of the Clubroom for the benefit of local senior citizens and wishes to continue to do so by granting this lease to the Club to enable the Club to continue to use the Clubroom to provide beneficial services to the local senior citizens in the community.

Annexure B Plan of the Clubroom

