

THIS DEED is made the 8th day of February 2006

BETWEEN: THE CORPORATION OF THE CITY OF UNLEY of 181 Unley Road, Unley SA 5061 (hereinafter with its successors and assigns called "the Council") of the one part

AND: TABOR COLLEGE INC. of 181 Goodwood Road, Millswood SA 5034 (hereinafter with his or its executors administrators successors and assigns as the case may be called "the Owner") of the other part

RECITALS:

- A. The Owner is, pursuant to a contract of sale dated 2006 (the "Contract of Sale") the registered proprietor of an estate in fee simple in the whole of the land comprised in Certificate of Title Register Book Volume 5861 Folio 686 (hereinafter called "the Land");
- B. It is a condition of the Contract of Sale that the Owner enter into this Deed;
- C. Situated on the Land is a building called 'The Goodwood Institute' (hereinafter called the "Theatre") constructed approximately in or around the early 1900's that is listed as a local heritage place in the Council's Development Plan pursuant to Development Act 1993 ("the Act");
- D. The Theatre is a community facility that prior to its sale by the Council to the Owner was used as a performing arts venue and for associated theatre activities;
- E. The Council wishes to ensure that the Theatre continues to be used as a performing arts venue and for associated theatre activities and can be made available to the community at various stages throughout the year at affordable rates and that the Theatre building is upgraded whilst being conserved, preserved and managed in a manner consistent with its heritage significance;
- F. The Owner (Tabor College Adelaide) is a multi-denominational Christian tertiary institution offering government accredited courses in both vocational education and training and higher education. The Owner is a non-profit organization registered as a private provider of government accredited courses;
- G. The Owner intends to continue the use of the Theatre as a performing arts venue for its tertiary performing arts program with Bachelor of Arts degree students together with continued community access;
- H. Pursuant to the provisions of Section 57(2) of the Act the Owner has agreed with the Council to enter into this Deed relating to the management, preservation and conservation of the Land subject to the terms and conditions hereinafter mentioned.

NOW THIS DEED WITNESSES as follows:

1. INTERPRETATION

- 1.1 The parties acknowledge that the matters recited above are true and accurate and agree that they shall form part of the terms of this Deed.
- 1.2 In the interpretation of this Deed unless the context shall otherwise require or admit:
 - 1.2.1 Words and phrases used in this Deed which are defined in the Development Act 1993 or in the Regulations made under the Act shall have the meanings ascribed to them by the Act or the Regulations as the case may be;
 - 1.2.2 References to any statute or subordinate legislation shall include all statutes and subordinate legislation amending consolidating or replacing the statute or subordinate legislation referred to;
 - 1.2.3 The term "the Owner" where the Owner is a company includes its successors, assigns and transferees and where the Owner is a person, includes his heirs, executors, administrators and transferees and where the Owner consists of more than one person or company the term includes each and every one or more of such persons or companies jointly and each of them severally and their respective successors, assigns, heirs, executors, administrators and transferees of the companies or persons being registered or entitled to be registered as the proprietor of an estate in fee simple to the Land or to each and every one of all separate allotments into which the Land may be divided after the date of this Deed subject however to such encumbrances, liens and interests as are registered and notified by memoranda endorsed on the Certificate of Title thereof;
 - 1.2.4 The term "person" shall include a corporate body;
 - 1.2.5 The term "the Land" shall include any part or parts of the Land;
 - 1.2.6 Any term which is defined in the statement of the names and descriptions of the parties or in the Recitals shall have the meaning there defined;
 - 1.2.7 Words importing the singular number or plural number shall be deemed to include the plural number and the singular number respectively;
 - 1.2.8 Words importing any gender shall include every gender;
 - 1.2.9 Where two or more persons are bound hereunder to observe or perform any obligation or agreement whether express or implied then they shall be bound jointly and each of them severally;
- 1.3 Clause headings are provided for reference purposes only and shall not be resorted to in the interpretation of this Deed;

- 1.4 The requirements of this Deed are at all times to be construed as additional to the requirements of the Act and any other legislation affecting the Land.

2. OWNER'S OBLIGATIONS

The Owner hereby agrees that:

- 2.1 The Owner shall ensure that the name "*The Goodwood Institute - Centre for Community Performing Arts*" be retained as the name of the Theatre in addition to any name, sign or reference that the Owner may in its absolute discretion lawfully adopt, apply or fix to the Theatre;
- 2.2 The Owner shall ensure that it uses its best endeavours to obtain all necessary approvals under the Act (as soon as reasonably practicable after the noting of this Deed pursuant to the Act) for the upgrading works to the Theatre building which are outlined in the "List of Upgrading Works" in Appendix "A" to this Deed ("the upgrading works");
- 2.3 The Owner shall use its best endeavours to commence the upgrading works within 12 months of obtaining all of the necessary approvals under the Act and shall use its best endeavours to have those works substantially completed within 12 months of the date of commencement;
- 2.4 Subject to any development approval under the Act for the development or renovation of the Theatre, the Owner shall use its best endeavours to keep the Theatre building properly maintained, to protect the Theatre's heritage value, and in particular, within 12 months of the date of this Deed, the Owner shall develop an asset management plan for the Theatre building including a 5 year capital improvement program;
- 2.5 The Owner shall have complete discretion to use the building for any lawful purpose subject to :
- 2.5.1 The Owner endeavouring to continue to use the Theatre as a venue for performing arts and associated theatre activities in association with the education activities that the Owner may undertake;
- 2.5.2 The Owner allowing the Theatre (but not including the two front rooms on the Southern side) to be made available for hire to the community;
- 2.5.2.1 during the times depicted in the Summary of Hire Times (which is annexed hereto as Appendix "B"); and
- 2.5.2.2 at rates that do not exceed the rates as depicted in the Table of Rates (which is annexed hereto as Appendix "C") as varied from time to time in accordance with Clause 3.1 of this Deed;
- 2.6 Where the Theatre has been hired to the community and/or externally, the Owner shall not intervene regarding the content or any other aspect of the performances staged at the Theatre by the hiree of the Theatre nor shall the Owner encourage any other person to do so;

- 2.7 The Owner shall honour until 31 December 2006 all hire agreements of the Theatre that were entered into prior to the request for expressions of interest in the purchase of the Theatre by the Council and in existence at the date of this Deed.

3. REVIEW OF RATES AND TIMES

The parties to this Deed agree that:

- 3.1 The Table of Rates for hire of the Theatre may be reviewed annually in the month of February in each year in consultation with the Council and the rates decided upon and set for the 12 month period following the said review shall be in accordance with rates for similar community theatres and facilities in the metropolitan Adelaide area;
- 3.2 The Owner may review the Summary of Hire Times upon request by the Council.

4. RESTRICTION ON LEASING AND OTHER DEALINGS

The Owner shall not grant any lease, licence, easement or other right of any nature whatsoever (but not including the hiring of the Theatre referred to in clause 2.5.2 of this Deed) which may give any person the right to possession or control of or entry on to the Land which right would enable such person to breach any of the obligations imposed on the Owner by this Deed unless such grant:

- 4.1 Is expressed in writing;
- 4.2 Is made with the prior written consent of the Council; and
- 4.3 Contains as an essential term a covenant by the grantee not to do or omit to do (or suffer or permit any other person to do or omit to do) any act matter or thing which would constitute a breach by the Owner of the Owner's obligations under this Deed.

5. RESCISSION

- 5.1 In the event that:
- 5.1.1 the Owner is a mortgagee in possession of the Land; or
- 5.1.2 the Owner ceases to operate as a higher education institution; or
- 5.1.3 the Owner permanently ceases to provide a tertiary performing arts education program; or
- 5.1.4 the Theatre is destroyed or rendered unusable by fire, storm, earthquake, lightning strike, flood, explosion, vehicle collision, act of terror or warfare or other similar act or circumstance beyond the control or direction of the Owner;

5.1.5 and in any event, after the expiration of forty (40) years from the date of this Deed;

then the Council agrees to rescind this Deed at the request of the Owner and the reasonable costs of, and incidental to, the preparation, stamping and registration of the Deed of Rescission shall be borne by the Owner.

6. COUNCIL'S POWER OF ENTRY, ETC

6.1 The Council and any employee or agent of the Council authorised by the Council may at any reasonable time enter and inspect the Land for the purposes of the enforcement and administration of this Deed;

6.2 If the Owner is in breach of any of the Owner's obligations under this Deed, the Council may serve a written notice on the Owner specifying the breach and requiring the Owner to remedy the breach within a period specified in the notice (being not less than 28 days) and in the event that the Owner fails to remedy the breach the Council may take such action as it is empowered to take under the Act as the Council in its absolute discretion sees fit;

6.3 The Council may delegate any of its powers under this Deed to any person.

7. VARIATION AND WAIVER

7.1 This Deed may not be varied except by a Supplementary Deed signed by the Council and the Owner;

7.2 The Council may waive compliance by the Owner with the whole or any part of the obligations on the Owner's part herein contained provided that no such waiver shall be effective unless expressed in writing and signed by the Council.

8. DISPUTE RESOLUTION

8.1 If any dispute or difference of any kind arises in connection with this Deed ("the Dispute") the parties shall endeavour to resolve the Dispute by negotiation. The parties shall attend at least one meeting to negotiate the Dispute as a condition precedent to commencing any other proceedings in respect of the Dispute;

8.2 If the Dispute cannot be resolved pursuant to clause 8.1, it shall be submitted to arbitration in accordance with, and subject to, the Commercial Arbitration Act 1986 of South Australia. The parties shall be entitled to be legally represented in such arbitration proceedings;

8.3 Notwithstanding the existence of any dispute, each party shall continue to perform the terms of this Agreement.

9. NOTICES

Notice shall for the purposes of this Deed be properly served on the Owner if it is:

9.1 posted to the Owner's last address known to the Council; or

9.2 affixed in a prominent position on the Land.

10. COSTS

The Council and the Owner will bear their own costs and expenses (including without limitation legal costs and expenses) of and incidental to the negotiation and preparation of this Deed and will share equally the costs of stamping and registration of this Deed.

11. NOTATION OF THIS DEED

Each party shall do and execute all such acts documents and things as shall be necessary to ensure that as soon as is possible after the execution of this Deed by all necessary parties this Deed is lodged with the Registrar General and a notation thereof entered on the Certificate of Title for the Land pursuant to the provisions of Section 57(5) of the Act in priority to any other registrable interest in the Land save and except for the estate and interest of the Owner therein.

12. GOVERNING LAW

The law governing the interpretation and implementation of the provisions of this Deed shall be the law of South Australia.

13. GENERAL PROVISIONS

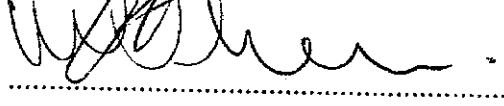
13.1 If any provision of this Deed shall be found by a court of competent jurisdiction to be invalid or unenforceable in law THEN and in such case the parties hereby request and direct such court to sever such provision from this Deed;

13.2 This Deed contains the whole agreement between the parties in respect of the matters referred to herein.

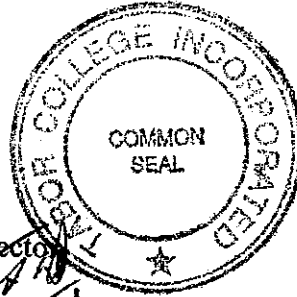
EXECUTED as a deed

THE COMMON SEAL of)
THE CORPORATION OF THE CITY OF)
UNLEY was hereunto affixed)
in the presence of:


..... Mayor


..... Chief Executive Officer

THE COMMON SEAL of TABOR
COLLEGE INC. was hereunto affixed
in the presence of



[Handwritten signature]

..... BOARD CHAIR

[Handwritten signature: W. J. G. ...]

..... CHIEF EXECUTIVE

)
)
)
Director *[Handwritten initials]*

Secretary *[Handwritten initials]*

APPENDIX "A"

List of Upgrading Works

As a minimum, the immediate upgrading of the Theatre building by the carrying out of works to the value of not less than \$150,000.00 (exclusive of GST) including the installation of air-conditioning, repairs, redecoration and other necessary improvements to ensure that the Theatre building may be occupied, used and operated effectively for an entire calendar year.

APPENDIX "B"

Summary of Hire Times

1. For a minimum of 12 weeks in each calendar year which will consist of:
 - 1.1 two separate 3 week periods; and
 - 1.2 three separate 2 week periods,of continuous 24 hour hire.
2. In addition to the times referred to in paragraph 1 of this Appendix "B", a minimum of 10 Fridays and 20 weekends during each calendar year.

APPENDIX "C"

Table of Rates

(These rates are exclusive of GST unless other wise indicated)

Cost Calculation As at September 2005	Rate 1: \$360 per day	= \$
	Commercial Daily Hire: 8am - midnight	
	Rate 2: \$1,550 per 7 days	= \$
	Commercial Weekly Hire: 7 days	
	Rate 3: \$70 per day	= \$
	Commercial Auditions	
	Rate 4: \$130 per day per day	= \$
	Commercial: foyer	
	Rate 5: \$180 per day	= \$
	Community Daily Hire: 8am - midnight	
	Rate 6: \$770 per 7 days	= \$
	Community Weekly Hire: 7 days	
	Rate 7: \$55 per day	= \$
	Community Auditions	
	Rate 8: \$65 per day	= \$
Community: foyer		
Bond: \$570 (incl GST, for community and commercial)		
TOTAL ESTIMATED HIRE	= \$	
GST (10%)	= \$	
Cleaning (incl GST)	= \$	
Equipment Hire At cost	= \$	
Technician Services At cost	= \$	

DATED 8th February 2006

BETWEEN:

**THE CORPORATION OF THE CITY OF
UNLEY**

of the one part

AND

TABOR COLLEGE INC.

of the other part

**LAND MANAGEMENT AGREEMENT
BY DEED**

NORMAN WATERHOUSE

Lawyers

Level 15

45 Pirie Street

ADELAIDE SA 5000

Telephone: 8210 1200

LANDS TITLES REGISTRATION
OFFICE
SOUTH AUSTRALIA

FORM APPROVED BY THE REGISTRAR-GENERAL

**BELOW THIS LINE FOR OFFICE &
STAMP DUTY PURPOSES ONLY**

Prefix
Series No.

BELOW THIS LINE FOR AGENT USE ONLY

CERTIFIED CORRECT FOR THE PURPOSES
OF THE REAL PROPERTY ACT 1886



Solicitor/Registered Conveyancer/Applicant

JOHN KENNETH WELLINGTON

AGENT CODE

Lodged by: ~~NORMAN WATERHOUSE~~ ~~NWAM~~

Correction to: **NORMAN WATERHOUSE** **NWAM**

TITLES, CROWN LEASES, DECLARATIONS ETC. LODGED WITH
INSTRUMENT (TO BE FILLED IN BY PERSON LODGING)

1.
2.
3.
4.

PLEASE ISSUE NEW CERTIFICATE(S) OF TITLE AS FOLLOWS

1.
2.
3.
4.

DELIVERY INSTRUCTIONS (Agent to complete)
PLEASE DELIVER THE FOLLOWING ITEM(S) TO THE
UNDERMENTIONED AGENT(S)

ITEM(S)	AGENT CODE

CORRECTION	PASSED
REGISTERED	
REGISTRAR-GENERAL	

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