

Lease of portion of Reserve 9610:
Lot 29612 & Lot 29611 Sewell
Street, Yealering – Lake
Yealering Bowling Club Inc.

Shire of Wickepin

Lake Yealering Bowling Club Inc.



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Details

Parties

Shire of Wickepin

of PO Box 19, Wickepin, Western Australia
(Lessor)

Lake Yealering Bowling Club (Inc)

of Sewell Street, Lake Yealering, Western Australia
(Lessee)

Background

- A The Lessor has the care, control and management of the Land pursuant to a Management Order.
- B Subject to the prior written approval of the Minister for Lands, the Lessor has agreed to lease and the Lessee has agreed to take a lease of the Premises upon the terms and conditions contained in this Deed.

Agreed terms

1. Definitions

Unless otherwise required by the context or subject matter the following words have these meanings in this Lease:

Alterations means any of the acts referred to in clauses **10.1(1)(b)**, **10.1(1)(c)**, **10.1(1)(d)** and **10.1(1)(e)**;

Amounts Payable means the Rent and any other money payable by the Lessee under this Lease;

Basic Consideration means all 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 Lease (other than tax payable pursuant to this clause);

CEO means the Chief Executive Officer for the time being of the Lessor or any person appointed by the Chief Executive Officer to perform any of her or his functions under this Lease;

Commencement Date means the date of commencement of the Term specified in **Item 5** of the Schedule;

Contaminated Sites Act means the *Contaminated Sites Act 2003 (WA)*;

Contamination has the same meaning as the word “contaminated” in the *Contaminated Sites Act 2003 (WA)*

Encumbrance means a mortgage, charge, lien, pledge, easement, restrictive covenant, writ, warrant or caveat and the claim stated in the caveat or anything described as an encumbrance on the Certificate of Title for the Land;

Further Term means the further term(s) specified in **Item 4** of the Schedule;

Good Repair means good and substantial tenantable repair and in clean, good working order and condition;

GST has the meaning that it bears in the GST Act;

GST Act means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and any legislation substituted for, replacing or amending that Act;

GST Adjustment Rate means the amount of any increase in the rate of tax imposed by the GST Law;

GST Law has the meaning that it bears in section 195-1 of the GST Act;

GST Rate means 10%, or such other figure equal to the rate of tax imposed by the GST Law;

Input Tax Credit has the meaning that it bears in section 195-1 of the GST Act.

Interest Rate means the rate at the time the payment falls due being 2% greater than the Lessor’s general overdraft rate on borrowings from its bankers on amounts not exceeding \$100,000.00;

Land means the land described at **Item 1** of the Schedule;

Lease means this lease and any equitable or common law tenancy evidenced by deed as supplemented, amended or varied from time to time;

Lessee’s Agents includes:

- (a) the sublessees, employees, agents, contractors, invitees and licensees of the Lessee; and
- (b) any person on the Premises by the authority of a person specified in paragraph (a);

Lessee’s Covenants means the covenants, agreements and obligations set out or implied in this Lease or imposed by law to be performed and observed by the Lessee;

Lessor’s Covenants means the covenants, agreements and obligations set out or implied in this Lease, or imposed by law to be performed and observed by the Lessor;

Management Order means the Management Order made under section 46 of the *Land Administration Act 1997*, under which the Reserve was vested in the Lessor for the purposes of Recreation and Water;

Minister for Lands means the Minister for Lands in her or his capacity as the body corporate continued under section 7 of the *Land Administration Act 1997*;

Notice means each notice, demand, consent or authority given or made to any person under this Lease;

Party means the Lessor or the Lessee according to the context and Parties means both the Lessor and the Lessee according to the context;

Permitted Purpose means the purpose set out in **Item 7** of the Schedule;

Premises means the area of the Land to be leased to the Lessee as more particularly described at **Item 2** of the Schedule;

Rent means the rent specified in **Item 6** of the Schedule as varied from time to time under this Lease;

Rent Review Date means a date identified in **Item 9** of the Schedule;

Schedule means the Schedule to this Lease;

Tax Invoice has the meaning which it bears in section 195-1 of the GST Act;

Taxable Supply has the meaning which it bears in section 195-1 of the GST Act.

Term means the term of years specified in **Item 1** of the Schedule; and

Termination means the date of:

- (a) expiry of the Term or any Further Term by effluxion of time;
- (b) sooner determination of the Term or any Further Term; or
- (c) determination of any period of holding over.

2. Minister for Lands' Consent

This Lease is subject to and conditional on the approval of the Minister for Lands under the *Land Administration Act 1997*.

3. Grant of lease

The Lessor leases to the Lessee the Premises for the Term subject to:

- (a) all Encumbrances;
- (b) the payment of the Amounts Payable; and
- (c) the performance and observance of the Lessee's Covenants.

4. Quiet enjoyment

Except as provided in the Lease, for so long as the Lessor is the management body of the Land under the Management Order and subject to the performance and observance of the

Lessee's Covenants, the Lessee may quietly hold and enjoy the Premises during the Term without any interruption or disturbance from the Lessor or persons lawfully claiming through or under the Lessor.

5. Rent and other payments

5.1 Rent

The Lessee covenants with the Lessor to pay to the Lessor the Rent in the manner set out at **Item 6** of the Schedule on and from the Commencement Date clear of any deductions.

5.2 Outgoings

- (1) The Lessee covenants with the Lessor to pay to the Lessor or to such person as the Lessor may from time to time direct punctually all outgoings or charges, assessed or incurred in respect of the Premises, including:
 - (a) local government rates, services and other charges, including but not limited to rubbish collection charges and the emergency services levy;
 - (b) telephone, electricity, gas and other power and light charges including but not limited to meter rents and the cost of installation of any meter, wiring or telephone connection and where possible the Lessee shall ensure that any accounts for all charges and outgoings in respect of telephone, electricity, gas and other power and light charges are taken out and issued in the name of the Lessee;
 - (c) any other consumption charge or cost, statutory impost or other obligation incurred or payable by reason of the Lessee's use and occupation of the Premises.
- (2) If the Premises are not separately charged or assessed the Lessee will pay to the Lessor a proportionate part of any charges or assessments referred to in **clause 5.2(1)** being the proportion that the Premises bears to the total area of the land or premises included in the charge or assessment.

5.3 Interest

Without affecting the rights, power and remedies of the Lessor under this Lease, the Lessee covenants to pay to the Lessor interest on demand on any Amounts Payable which are unpaid for thirty (30) days computed from the due date for payment until payment is made and any interest payable under this paragraph will be charged at the Interest Rate.

5.4 Costs

- (1) The Lessee covenants with the Lessor to pay to the Lessor on demand:
 - (a) all duty, fines and penalties payable under the *Duties Act 2008* and other statutory duties or taxes payable on or in connection with this Lease;
 - (b) all registration fees in connection with this Lease; and
 - (c) all legal costs of and incidental to the instructions for the preparation, execution and stamping of this Lease and all copies.
- (2) The Lessee covenants with the Lessor to pay to the Lessor all costs, legal fees, disbursements and payments incurred by or for which the Lessor is liable in connection with or incidental to:

- (a) the Amounts Payable or obtaining or attempting to obtain payment of the Amounts Payable under this Lease;
- (b) any breach of covenant by the Lessee or the Lessee's Agents
- (c) the preparation and service of a notice under Section 81 of the *Property Law Act 1969* requiring the Lessee to remedy a breach even though forfeiture for the breach may be avoided in a manner other than by relief granted by a Court;
- (d) any work done at the Lessee's request; and
- (e) any action or proceedings arising out of or incidental to any matters referred to in this **clause 5.4** or any matter arising out of this Lease.

5.5 Payment of Money

Amounts Payable to the Lessor under this Lease must be paid to the Lessor at the address of the Lessor referred to in this Lease or as otherwise directed by the Lessor by Notice from time to time.

5.6 Accrual of amounts payable

Amounts Payable accrue on a daily basis.

6. Rent Review

6.1 Rent to be reviewed

The Rent will be reviewed on and from each Rent Review Date to determine the Rent to be paid by the Lessee until the next Rent Review Date.

6.2 Methods of review

The review will be either based on CPI or a Market Review. The basis for each rent review is as identified for each Rent Review Date in **Item 9** of the Schedule.

6.3 CPI review

A rent review based on CPI will increase the amount of Rent payable during the immediately preceding period by the percentage of any increase in CPI having regard to the quarterly CPI published immediately prior to the later of the Commencement Date or the last Rent Review Date as the case may be and the quarterly CPI published immediately prior to the relevant Rent Review Date. If there is a decrease in CPI having regard to the relevant CPI publications the Rent payable from the relevant Rent Review Date will be the same as the Rent payable during the immediately preceding period. Should the CPI be discontinued or suspended at any time or its method of computation substantially altered, the Parties shall endeavour to agree upon the substitution of the CPI with an equivalent index, or failing agreement by the Parties, the substitution shall be made by a Valuer appointed in accordance with **clause 6.4**.

6.4 Market rent review

- (1) A rent review based on market rent will establish the current market rent for the Premises (which will not be less than the Rent payable in the period immediately preceding the Rent Review Date) by agreement between the Parties and failing agreement, will be determined in accordance with the following provisions.

- (2) If agreement as to the current market rent for the Premises is not reached at least one (1) month prior to the relevant Rent Review Date then the current market rent for the Premises will be determined at the expense of the Lessee by a valuer licensed under the *Land Valuers Licensing Act 1978* (**Valuer**), to be appointed, at the request of either Party, by the President for the time being of the Australian Property Institute (Western Australian Division) (or if such body no longer exists, such other body which is then substantially performing the functions performed at the Commencement Date by that Institute).
- (3) The Valuer will act as an expert and not as an arbitrator and his or her decision will be final and binding on the Parties. The Parties will be entitled to make submissions to the Valuer.
- (4) In this **clause 6**, “current market rent” means the rent obtainable for the Premises in a free and open market if the Premises was unoccupied and offered for rental for the use for which the Premises is permitted pursuant to this Lease and on the same terms and conditions contained in this Lease, but will not include:
 - (a) any improvements made or effected to the Premises by the Lessee; and
 - (b) any rent free periods, discounts or other rental concessions.

6.5 Rent will not decrease following rent review

Notwithstanding the provisions in this clause, the Rent payable from any rent review will not be less than the Rent payable in the period immediately preceding such Rent Review Date.

6.6 Lessor’s right to review

The Lessor may institute a rent review notwithstanding the Rent Review Date has passed and the Lessor did not institute a rent review on or prior to that Rent Review Date, and in which case the Rent agreed or determined shall date back to and be payable from the Rent Review Date for which such review is made.

7. Insurance

7.1 Insurance required

- (1) The Lessee must effect and maintain with insurers approved by the Lessor (noting the Lessor’s and the Lessee’s respective rights and interests in the Premises) for the time being:
 - (a) adequate public liability insurance for a sum not less than the sum set out at **Item 8** of the Schedule in respect of any one claim or such greater amount as the Lessor may from time to time reasonably require;
 - (b) insurance to cover the Lessee’s fixtures, fittings, equipment and stock against loss or damage by fire, fusion, smoke, lightning, flood, storm, tempest, earthquake, sprinkler leakage, water damage and other usual risks against which a lessee can and does ordinarily insure in their full replacement value, and loss from theft or burglary;
 - (c) adequate workers’ compensation insurance in respect of all employees employed by the Lessee in, about or from the Premises; and
 - (d) a policy of personal accident insurance including insurance in respect of all volunteers of the Lessee employed in, about or from the Premises.

- (2) The Lessee is responsible for all excess payments in connection with the insurances referred to in this clause in connection with this Lease.

7.2 Building Insurance

If a building or buildings are constructed on the Premises, the Lessee shall effect and keep effected insurance to the full insurable value on a replacement or reinstatement value basis of any building constructed on the Premises against damage arising from fire, tempest, storm, earthquake, explosion, aircraft, or other aerial device including items dropped from any device, riot, commotion, flood, lightning, act of God, fusion, smoke, rainwater, leakage, impact by vehicle, machinery breakdown and malicious acts or omissions and other standard insurable risks and the Lessee will reimburse the Lessor for any premiums, excess or other costs arising therefrom.

7.3 Lessee to pay excess on insurance

The Lessee is responsible for all excess payments in connection with the insurance referred to in this clause in connection with this Lease.

7.4 Details and receipts

In respect of the insurances required to be obtained by the Lessee pursuant to this **clause 7** the Lessee must:

- (a) on demand supply to the Lessor details of the insurances and give to the Lessor, annually, copies of the certificates of currency in relation to those insurances;
- (b) promptly pay all premiums and produce to the Lessor each policy or certificate of currency and each receipt for premiums or certificate of currency issued by the insurers; and
- (c) notify the Lessor immediately:
 - (i) when an event occurs which gives rise or might give rise to a claim under or which could prejudice a policy of insurance; or
 - (ii) when a policy of insurance is cancelled.

7.5 Not to invalidate

The Lessee must not do or omit to do any act or thing or bring or keep anything on the Premises which might:

- (a) render any insurance effected under this clause, or any insurances on adjoining premises, void or voidable; or
- (b) cause the rate of a premium for such to be increased for the Premises or any adjoining premises (except insofar as an approved development may lead to an increased premium).

7.6 Report

The Lessee must report to the Lessor promptly in writing, and in addition verbally in an emergency:

- (a) any damage to the Premises of which it is aware; and
- (b) any circumstances of which it is aware and which are likely to be a danger or cause any damage or danger to the Premises or to any person in or on the Premises.

7.7 Settlement of claim

The Lessor may, but the Lessee may not without prior written consent of the Lessor, settle or compromise any claims under any policy of insurance required by this clause.

7.8 Lessor as attorney

The Lessee irrevocably appoints the Lessor as the Lessee's attorney during the Term:

- (a) in respect to all matters and questions which may arise in relation to any insurances required by this clause;
- (b) with full power to demand, sue for and recover and receive from any insurance company or society or person liable to pay the insurance money as are payable for the risks covered by the insurances required by this clause;
- (c) to give good and effectual receipts and discharges for the insurance; and
- (d) to settle, adjust, arbitrate and compromise all claims and demands and generally to exercise all powers of absolute owner.

7.9 Lessee's equipment and possessions

The Lessee acknowledges it is responsible to obtain all relevant insurances to cover any damage and/or theft to its property. The Lessor does not take any responsibility for the loss or damage of the Lessee's property.

8. Indemnity

8.1 Lessee responsibilities

- (1) The Lessee is subject to the same responsibilities relating to persons and property to which the Lessee would be subject if during the Term the Lessee were the owner and occupier of the freehold of the Premises.
- (2) The Lessee is responsible and liable for all acts or omissions of the Lessee's Agents on the Premises and for any breach by them of any covenants or terms in this Lease required to be performed or complied with by the Lessee.

8.2 Indemnity

The Lessee indemnifies, and shall keep indemnified, the Lessor and the Minister for Lands from and against all actions, claims, costs, proceedings, suits and demands whatsoever which may at any time be incurred or suffered by the Lessor and/or the Minister for Lands, or brought, maintained or made against the Lessor and/or the Minister for Lands, in respect of:

- (a) any loss whatsoever (including loss of use);
- (b) injury or damage of, or to, any kind of property or thing; and

- (c) the death of, or injury suffered by, any person,
caused by, contributed to, or arising out of, or in connection with, whether directly or indirectly:
- (d) the use or occupation of the Premises by the Lessee or the Lessee's Agents;
- (e) any work carried out by or on behalf of the Lessee on the Premises;
- (f) the Lessee's activities, operations or business on, or other use of any kind of, the Premises;
- (g) the presence of any Contamination, Pollution or Environmental Harm in on or under the Premises or adjoining land caused or contributed to by the act, neglect or omission of the Lessee or the Lessee's Agents;
- (h) any default by the Lessee in the due and punctual performance, observance and compliance with any of the Lessee's covenants or obligations under this Lease; or
- (i) an act or omission of the Lessee.

8.3 Obligations Continuing

The obligations of the Lessee under this clause:

- (a) are unaffected by the obligation of the Lessee to take out insurance, and the obligations of the Lessee to indemnify are paramount, however if insurance money is received by the Lessor for any of the obligations set out in this clause then the Lessee's obligations under **clause 8.2** will be reduced by the extent of such payment; and
- (b) continue after the expiration or earlier determination of this Lease in respect of any act, deed, matter or thing occurring or arising as a result of an event which occurs before the expiration or earlier determination of this Lease.

8.4 No indemnity for Lessor's negligence

The parties agree that nothing in this clause shall require the Lessee to indemnify the Lessor, its officers, servants, or agents against any loss, damage, expense, action or claim to the extent it is directly caused by a negligent or wrongful act or omission of the Lessor, or its servants, agents, contractors or invitees.

8.5 Release

- (1) The Lessee:
 - (a) agrees to occupy and use the Premises at the risk of the Lessee; and
 - (b) releases to the full extent permitted by law, the Lessor and the Minister for Lands from:
 - (i) any liability which may arise in respect of any accident or damage to property, the death of any person, injury to any person, or illness suffered by any person, occurring on the Premises or arising from the Lessee's use or occupation of the Premises by the Lessee;

- (ii) loss of or damage to the Premises or personal property of the Lessee; and
- (iii) all claims, actions, loss, damage, liability, costs and expenses arising from or connected with (directly or indirectly) the presence of any Contamination, Pollution or Environmental Harm in, on or under the Premises or surrounding area

except to the extent that such loss or damage is directly caused by a negligent or wrongful act or omission of the Lessor, or its servants, agents, contractors or invitees.

- (2) The release by the Lessee continues after the expiration or earlier determination of this Lease in respect of any act, deed, matter or thing occurring or arising as a result of an event which occurs before the expiration or earlier determination of this Lease.

8.6 Limit of Lessor's liability

- (1) The Lessor is only liable for breaches of the Lessor's Covenants set out in this Lease which occur while the Lessor is the management body or registered proprietor of the Premises.
- (2) The Lessor will not be liable for any failure to perform and observe any of the Lessor's Covenants due to any cause beyond the Lessor's control.

9. Maintenance, repair and cleaning

9.1 Generally

- (1) During the Term and for so long as the Lessee remains in possession or occupation of the Premises to maintain, replace, repair, clean and keep the Premises (which for the avoidance of doubt includes the Lessor's fixtures and fittings and any structures or buildings constructed on the Premises) clean and in Good Repair having regard to the age of the Premises at the Commencement Date provided that this subclause shall not impose on the Lessee any obligation:
 - (a) to carry out repairs or replacement that are necessary as a result of fair and reasonable wear and tear; and
 - (b) in respect of any structural repairs except when such maintenance, repair or replacement is necessary because of any act or omission of or on the part of the Lessee (or any of the Lessee's Agents), or by the Lessee's particular use or occupancy of the Premises, or the Lessor's insurances are invalidated by any act, neglect or default by the Lessee (or the any of the Lessee's Agents). For the purpose of clarity 'structural repairs' means repairs that are required to hold the building together, such as repairs to the foundations, walls, roofs and floor structures.
- (2) Without limiting the Lessee's obligations under this clause, the Lessee is responsible for the maintenance, cleaning and repair of the bowling surface and associated infrastructure.
- (3) In discharging the obligations imposed on the Lessee under this subclause, the Lessee shall where maintaining, replacing or repairing in or on the Premises use only licensed trades persons, or such trades persons as may be approved by the Lessor and notified to the Lessee, which approval shall not be unreasonably withheld.

9.2 Comply with all reasonable conditions

The Lessee must comply with all reasonable conditions that may be imposed by the Lessor from time to time in relation to the Lessee's maintenance of the Premises (and any structures or buildings constructed on the Premises).

9.3 Damage to Premises, Lessor's Fixtures and Fittings and Common Areas

- (1) The Lessee must report to the Lessor any breakage or damage to the Premises, the Lessor's Fixture's and Fittings, or any other part of the Premises or any appurtenance or equipment therein, immediately upon becoming aware of the damage.
- (2) The Lessee must pay to the Lessor the cost of repairing, replacing and/or making good any such breakage or damage of the type referred to in **clause 9.3(1)** above where such breakage or damage arises as a result of an act or omission of the Lessee (or any the Lessee's Agents) or is related to the Lessee's particular use and occupation of the Premises, including the cost of labour and materials and replacement equipment, and must, if required by the Lessor, itself repair and make good any such damage.

9.4 Cleaning

The Lessee must at all times keep the Premises clean, tidy, unobstructed and free from rubbish.

9.5 Pest control

The Lessee must keep the Premises free of any vermin or any other recognised pests and the cost of extermination will be borne by the Lessee.

9.6 Lessor's Fixtures and Fittings

The Lessee covenants and agrees that the Lessor's fixtures and fittings will remain the property of the Lessor and must not be removed from the Premises at any time.

9.7 Responsibility for Securing the Premises

The Lessee must ensure the Premises, including Lessor's fixtures and fittings, are appropriately secured at all times.

9.8 Maintain surroundings

- (1) The Lessee must regularly inspect and maintain in good condition any part of the Premises, including, but not limited to any flora, gardens, lawns, shrubs, hedges and trees.
- (2) The Lessee agrees that any pruning of trees must be undertaken by a qualified tree surgeon.
- (3) If any flora, lawn or tree dies the Lessee must replace the flora, lawn or tree at their own expense.
- (4) The Lessee must comply with and implement any landscaping, reticulation and similar plans approved by the Lessor (in its capacity as responsible local authority) pursuant to any condition or conditions of development approval for the Premises.
- (5) The Lessee must care for such flora, lawns, trees on the Premises as the Lessor may from time to time reasonably require.

- (6) The Lessee may not remove any trees, shrubs or hedges without first consulting with and obtaining the approval of the Lessor, except where necessary for urgent safety reasons.

9.9 Drains

- (1) The Lessee must keep and maintain the waste pipes, drains and conduits originating in the Premises or connected thereto in a clean clear and free flowing condition and must pay to the Lessor upon demand the cost to the Lessor of clearing any blockage which may occur in such waste pipes, drains and conduits between the external boundaries of the Premises and the point of entry thereof into any trunk drain unless such blockage has been caused without neglect or default on the part of the Lessee.
- (2) The Lessee must not permit the drains, toilets, grease traps (if any) and other sanitary appliances on the Premises to be used for any purpose other than that for which they were constructed and must not allow any foreign matter or substance to be thrown therein.

9.10 Acknowledgement of state of repair of Premises

- (1) The Lessee accepts the Premises in its present condition relying upon its own enquiries and investigations.
- (2) The Lessee acknowledges that it has inspected the structure of the Premises internally and externally prior to the execution of this Lease and enters into this Lease with full knowledge of the structural state and state of repair of the Premises.
- (3) The Lessor does not expressly or impliedly warrant that the Premises is or will remain suitable or adequate for all or any of the purposes of the Lessee or for the business which the Lessee is authorised to conduct thereon and to the extent permitted by law, all warranties (if any) as to suitability and adequacy of the Premises implied by law are hereby expressly negatived.

10. Alterations

10.1 Restriction

- (1) The Lessee must not without prior written consent:
- (a) (i) from the Lessor;
 - (ii) from any other person from whom consent is required under this Lease;
 - (iii) required under statute in force from time to time, including but not limited to the planning approval of the Lessee under a town planning scheme of the Lessee;
 - (b) install any new signage;
 - (c) make or allow to be made any alteration, addition or improvements to or demolish any part of the Premises;
 - (d) remove alter or add to any fixtures, fittings or facilities in or on the Premises; or
 - (e) subject to the performance of the Lessee's obligations in **clause 9**, remove any flora or fauna, alter or cut down any flora, or sell, remove or otherwise dispose of any flora, sand, gravel, timber or other materials from the Premises.

10.2 Consent

If the Lessor and any other person whose consent is required under this Lease or at law consents to any matter referred to in **clause 10.1** the Lessor may:

- (a) consent subject to conditions; and
 - (i) require that work be carried out in accordance with plans and specifications approved by the Lessor or any other person giving consent;
 - (ii) require that work be carried out in accordance with the Building Code of Australia; and
 - (iii) require that any alteration be carried out to the satisfaction of the Lessor under the supervision of an engineer or other consultant; and
- (b) if the Lessor consents to any matter referred to in **clause 10.1**:
 - (i) the Lessor gives no warranty that the Lessor will issue any consents, approvals, authorities, permits or policies under any statute for such matters; and
 - (ii) the Lessee must apply for and obtain all such consent, approvals, authorities, permits or policies as are required at law before undertaking any alterations, additions, improvements or demolitions and must strictly comply with such consents or approvals.

10.3 Cost of Works

All works undertaken under this clause will be carried out at the Lessee's expense.

10.4 Conditions

If any of the consents given by the Lessor or other persons whose consent is required under this Lease or at law require other works to be done by the Lessee as a condition of giving consent, then the Lessee must at the option of the Lessor either:

- (a) carry out those other works at the Lessee's expense; or
 - (b) permit the Lessor to carry out those other works at the Lessee's expense,
- in accordance with the Lessor's requirements.

11. Use

11.1 Restrictions on use

(1) Generally

The Lessee must not and must not suffer or permit a person to:

- (a) use the Premises or any part of it for any purpose other than the Permitted Purpose; or
- (b) use the Premises for any purpose which is not permitted under any local or town planning scheme, local laws, acts, statutes or any law relating to health.

(2) No offensive or illegal acts

The Lessee must not and must not suffer or permit a person to do or carry out on the Premises any harmful, offensive or illegal act, matter or thing.

(3) No nuisance

The Lessee acknowledges that:

- (a) the Premises are located in close proximity to residential premises;
- (b) the Lessee must not and must not suffer or permit a person to do or carry out on the Premises any thing which causes a nuisance, disruption, damage or disturbance to the Lessor or to owners or occupiers of the surrounding residential premises particularly during and following social events held at the Premises; and
- (c) the Lessee must comply with all reasonable conditions that may be imposed by the Lessor from time to time in relation to the minimisation and prevention of any nuisance, disruption, damage or disturbance to the Lessor or to owners or occupiers of the surrounding residential premises.

(4) No dangerous substances

The Lessee must not and must not suffer or permit a person to store any dangerous compound or substance on or in the Premises, otherwise than in accordance with the following provisions:

- (a) any such storage must comply with all relevant statutory provisions;
- (b) all applications for the approval or renewal of any licence necessary for such storage must be first referred to the Lessor;
- (c) the Lessor may within its absolute discretion refuse to allow the storage of any particular dangerous compound or substance on the Premises; and
- (d) upon the request of the Lessor, the Lessee will provide a list of all dangerous compounds or substances stored on the Premises.

(5) No harm or stress

The Lessee must not and must not suffer or permit a person to do any act or thing which might result in excessive stress or harm to any part of the Premises.

(6) No signs

The Lessee must not and must not suffer or permit a person to display from or affix any signs, notices or advertisements on the Premises without the prior written consent of the Lessor.

(7) No smoking

The Lessee must not suffer or permit a person to smoke inside any building or other enclosed area on the Premises.

(8) No alcohol

The Lessee must not suffer or permit a person to use or allow the Premises to be used for the consumption of alcohol without first obtaining the written consent of the Lessor.

(9) Removal of rubbish

The Lessee must not allow accumulation of dirt and rubbish on the Premises or fail to store and keep all trade waste and garbage in proper receptacles.

(10) No pollution

The Lessee must do all things necessary to prevent pollution or contamination of the Premises by garbage, refuse, waste matter, oil and other pollutants.

(11) No Residence/Auction sales

The Lessee must not and must not suffer or permit a person to use the Premises as the residence or sleeping place of any person or for auction sales.

11.2 No Warranty

The Lessor gives no warranty:

- (a) as to the use to which the Premises may be put; or
- (b) that the Lessor will issue any consents, approvals, authorities, permits or licences required by the Lessee under any statute for its use of the Premises.

11.3 Lessee to Observe Copyright

In the event that the Lessee or any person sub-leasing, hiring, or in temporary occupation of the Premises provides, contracts for, or arranges for the performance, exhibition or display of any music or work of art the copyright of which is not vested in the Lessee or that person, the Lessee shall ensure that all obligations in regard to payment of copyright or licensing fees with the owner or licensor of the copyright are met before any such performance, exhibition or display is held.

11.4 Premises Subject to Restriction

The Lessee accepts the Premises for the Term subject to any existing prohibition or restriction on the use of the Premises.

11.5 Handling of Food on the Premises

Where food/beverage is sold or handled in any way on the Premises, the Lessee shall:

- (a) provide adequate facilities for the hygienic handling of such food/beverage, including facilities for the washing of hands and utensils;
- (b) notwithstanding any other provision of this Lease, not permit or allow food/beverage vendor or handler to breach the provisions of the *Health Act 1911* or *Food Act 2008* any order, regulation or other by-law or local law or direction made relating to food/beverage or its preparation or handling;

- (c) without limiting the generality of the obligations in the foregoing paragraphs the Lessee will take adequate measures at all times to the satisfaction of the Lessor to safeguard any food/beverage being sold or distributed on the Premises from flies and dust; and
- (d) obtain all necessary permits and approvals under the provisions of the *Health Act 1911* or *Food Act 2008* and any associated legislation or any equivalent replacement or re-enactment thereof.

11.6 Indemnity for Costs

The Lessee indemnifies the Lessor against any claims or demands for all costs, on a solicitor client basis, incurred by the Lessor by reason of any claim in relation to any matters set out in this this clause.

12. Alcohol

12.1 Consumption of alcohol

The Lessee covenants and agrees:

- (a) not to use or allow the Premises to be used for the consumption or sale of alcohol without first obtaining the written consent of the Lessor, and the Lessor shall determine any such application in its absolute discretion; and
- (b) that it shall not make an application for a licence or permit under the *Liquor Control Act 1988* for the Premises, or apply for an amendment to a licence or permit it has been granted, without first obtaining the written consent of the Lessor.

12.2 Liquor licence

The Lessee covenants and agrees that if a licence or permit is granted under the *Liquor Control Act 1988* for the Premises it must:

- (a) comply with any requirements attaching to the licence or permit at its cost and where any alteration is required to the Premises **clause 10** shall apply;
- (b) comply with the requirements of the Harm Minimisation Policy (as amended from time to time) of the Department of Racing, Gaming & Liquor, which will require, without limitation the following:
 - (i) the development and implementation of a House Management Policy and Code of Conduct (as defined by the Harm Minimisation Policy) for the Premises, and such policies must be displayed in a prominent position on the Premises at all times; and
 - (ii) the development and implementation of a Management Plan (as defined by the Harm Minimisation Policy) for the Premises.
- (c) provide a copy of the licence or permit (as well as a copy of any document referred to in the licence or permit, including without limitation a copy of the House Management Policy, Code of Conduct and Management Plan (as defined by the Harm Minimisation Policy)) to the Lessor as soon as practicable after the date of grant; and

- (d) indemnify and keep indemnified the Lessor from and against any breach of the *Liquor Control Act 1988*, *Health (Food Hygiene) Regulations 1993*, *Liquor Control Regulations 1989* or the licence or permit or any conditions imposed thereupon for which it may be liable as the owner of the Premises.

13. Lessor's right of entry

13.1 Entry on Reasonable Notice

The Lessee must permit entry by the Lessor onto the Premises without notice in the case of an emergency, and otherwise upon reasonable notice:

- (a)
 - (i) at all reasonable times;
 - (ii) with or without workmen and others; and
 - (iii) with or without plant, equipment, machinery and materials;
- (b) for each of the following purposes:
 - (i) to inspect the state of repair of the Premises and to ensure compliance with the terms of this Lease;
 - (ii) to carry out any survey or works which the Lessor considers necessary, however the Lessor will not be liable to the Lessee for any compensation for such survey or works provided they are carried out in a manner which causes as little inconvenience as is reasonably possible to the Lessee;
 - (iii) to comply with the Lessor's Covenants or to comply with any notice or order of any authority in respect of the Premises for which the Lessor is liable; and
 - (iv) to do all matters or things to rectify any breach by the Lessee of any term of this Lease but the Lessor is under no obligation to rectify any breach and any rectification under this clause is without prejudice to the Lessor's other rights, remedies or powers under this Lease.

13.2 Costs of Rectifying Breach

All costs and expenses incurred by the Lessor as a result of any breach referred to in **clause 13.1(b)(iv)** together with any interest payable on such sums will be a debt due to the Lessor and payable to the Lessor by the Lessee on demand.

14. Statutory obligations and notices

14.1 Comply with Statutes

The Lessee must:

- (a) comply promptly with all statutes and local laws from time to time in force relating to the Premises, including without limitation all relevant laws relating to occupational health and safety and the health and safety of all persons entering upon the Premises;

- (b) apply for, obtain and maintain in force all consents, approvals, authorities, licences and permits required under any statute for the use of the Premises specified at **clause 11**;
- (c) comply with all relevant state and commonwealth law and all relevant codes, including without limitation the Building Code of Australia, and all relevant standards published by Standards Australia;
- (d) ensure that all obligations in regard to payment for copyright or licensing fees are paid to the appropriate person for all performances, exhibitions or displays held on the Premises; and
- (e) comply promptly with all orders, notices, requisitions or directions of any competent authority relating to the Premises or to the business the Lessee carries on at the Premises.

14.2 Safety & Testing Obligations

- (1) The Lessee acknowledges and agrees that it is fully responsible at its cost for ensuring that the Premises, and any fixtures or fittings located on the Premises, are regularly tested, maintained and inspected to ensure that the Premises and such fixtures and fittings comply with all statutory requirements and are safe for use.
- (2) To comply with its obligation pursuant to **clause 14.2(1)** above, the Lessee acknowledges that it will be required to, amongst other things:
 - (a) comply with the requirements of the *Occupational Safety and Health Act 1984*, including without limitation the requirement for all portable plug-in electrical equipment and residual current devices to be safe and appropriately inspected, tested and maintained by a competent person;
 - (b) comply with all relevant requirements of the Department of Fire & Emergency Services (**DFES**), including without limitation the requirement to ensure that all fire protection and firefighting equipment located, or installed at or on the Premises, is tested regularly for compliance with Australian Standards and DFES's requirements; and
 - (c) ensure that the emergency/exit lighting systems on the Premises (if applicable) are adequately maintained in accordance with the requirements of the Building Code of Australia and relevant Australian Standards.

14.3 Indemnity if Lessee Fails to Comply

The Lessee indemnifies the Lessor against:

- (a) failing to perform, discharge or execute any of the items referred to in **clauses 14.1 and 14.2**; and
- (b) any claims, demands, costs or other payments of or incidental to any of the items referred to in **clauses 14.1 and 14.2**.

14.4 No Fetter

Notwithstanding any other provision of this Lease, the Parties acknowledge that the Lessor is a local government established by the *Local Government Act 1995*, and in that capacity, the

Lessor may be obliged to determine applications for consents, approvals, authorities, licences and permits having regard to any written law governing such applications including matters required to be taken into consideration and formal processes to be undertaken, and the Lessor shall not be taken to be in default under this Lease by performing its statutory obligations or exercising its statutory discretions, nor shall any provision of this Lease fetter the Lessor in performing its statutory obligations or exercising any discretion.

15. Report to Lessor

The Lessee must immediately report to the Lessor:

- (a) any act of vandalism or any incident which occurs on or near the Premises which involves or is likely to involve a breach of the peace or become the subject of a report or complaint to the police and of which the Lessee is aware or should be aware;
- (b) any occurrence or circumstances in or near the Premises of which it becomes aware, which might reasonably be expected to cause, in or on the Premises, pollution of the environment; and
- (c) all notices, orders and summonses received by the Lessee and which affect the Premises and immediately deliver them to the Lessor.

16. Default

16.1 Events of Default

A default occurs if:

- (a) any Amounts Payable remain unpaid for fourteen (14) days after a due date for their payment;
- (b) the Lessee is in breach of any of the Lessee's Covenants for thirty (30) days after a Notice has been given to the Lessee to rectify the breach or to pay compensation in money;
- (c) the association is wound up whether voluntarily or otherwise;
- (d) the Lessee passes a special resolution under the *Associations Incorporation Act 2015* altering its rules of association in a way that makes its objects or purposes inconsistent with the use permitted by this Lease;
- (e) a mortgagee takes possession of the property of the Lessee under this Lease;
- (f) any execution or similar process is made against the Premises on the Lessee's property;
- (g) the Premises are vacated, or otherwise not used, in the Lessor's reasonable opinion, for the permitted purpose for six (6) month period;
- (h) a person other than the Lessee or a permitted sublessee or assignee is in occupation or possession of the Premises or in receipt of a rent and profits.

16.2 Forfeiture

On the occurrence of any of the events of default specified in **clause 16.1** the Lessor may:

- (a) without notice or demand at any time enter the Premises and on re-entry the Term will immediately determine;
- (b) by notice to the Lessee determine this Lease and from the date of giving such notice this Lease will be absolutely determined; and
- (c) by notice to the Lessee elect to convert the unexpired portion of the Term into a tenancy from month to month when this Lease will be determined as from the giving of the notice and until the tenancy is determined the Lessee will hold the Premises from the Lessor as a tenant from month to month under **clause 19**,

but without affecting the right of action or other remedy which the Lessor has in respect of any other breach by the Lessee of the Lessee's Covenants or releasing the Lessee from liability in respect of the Lessee's Covenants.

16.3 Lessor may remedy breach

If the Lessee:

- (a) fails or neglects to pay the Amounts Payable by the Lessee under this Lease; or
- (b) does or fails to do anything which constitutes a breach of the Lessee's Covenants,

then, after the Lessor has given to the Lessee notice of the breach and the Lessee has failed to rectify the breach within a reasonable time, the Lessor may without affecting any right, remedy or power arising from that default pay the money due or do or cease the doing of the breach as if it were the Lessee and the Lessee must pay to the Lessor on demand the Lessor's cost and expenses of remedying each breach or default.

16.4 Acceptance of Amount Payable By Lessor

Demand for or acceptance of the Amounts Payable by the Lessor after an event of default has occurred will not affect the exercise by the Lessor of the rights and powers conferred on the Lessor by the terms of the Lease or at law and will not operate as an election by the Lessor to exercise or not to exercise any right or power.

16.5 Essential Terms

Each of the Lessee's Covenants in **clauses 5** (Rent and Other Payments), **7** (Insurance), **8** (Indemnity), **9** (Maintenance, Repair and Cleaning), **11** (Use), **21** (Assignment, Subletting and Charging) and **25** (Goods and Services Tax) are essential terms of this Lease but this **clause 16.5** does not mean or imply that there are no other essential terms in this Lease.

16.6 Breach of Essential Terms

If the Lessee breaches an essential term of this Lease then, in addition to any other remedy or entitlement of the Lessor:

- (a) the Lessee must compensate the Lessor for the loss or damage suffered by reason of the breach of that essential term;

- (b) the Lessor will be entitled to recover damages against the Lessee in respect of the breach of an essential term; and
- (c) the Lessee covenants with the Lessor that if the Term is determined:
 - (i) for breach of an essential term or the acceptance by the Lessor of a repudiation of this Lease by the Lessee; or
 - (ii) following the failure by the Lessee to comply with any notice given to the Lessee to remedy any default,

the Lessee must pay to the Lessor on demand the total of the Amounts Payable under this Lease which would have been payable by the Lessee for the unexpired balance of the Term as if the Term had expired by effluxion of time together with the losses incurred or reasonably expected to be incurred by the Lessor as a result of the early determination including but not limited to the costs of re-letting or attempting to re-let the Premises;
- (d) the Lessee agrees that the covenant set out in this **clause 16.6(c)** will survive termination or any deemed surrender at law of the estate granted by this Lease;
- (e) the Lessee may deduct from the amounts referred to at **clause 16.6(c)** the Rent and other money which the Lessor reasonably expects to obtain by re-letting the Premises between the date of Termination and the date on which the Term would have expired by effluxion of time; and
- (f) the Lessor must take reasonable steps to mitigate its losses and endeavour to re-let the Premises at a reasonable rent and on reasonable terms but the Lessor is not required to offer or accept rent or terms which are the same or similar to the rent or terms contained or implied in this Lease.

17. Damage or Destruction of Premises

17.1 Abatement of Rent

If the Premises are at any time during the Term, without neglect or default of the Lessee, destroyed or damaged by fire or other risk covered by insurance so as to render the same unfit for the occupation and use of the Lessee, then the Rent or a proportionate part thereof (according to the nature and extent of the damage) shall abate until the Premises have been rebuilt or made fit for the occupation and use of the Lessee, and in case of any dispute arising under this provision the same will be referred to arbitration under the provisions of the *Commercial Arbitration Act 2012* and the full Rent must be paid without any deduction or abatement until the date of the arbitrator's award whereupon the Lessor will refund to the Lessee any Rent which according to the aware appears to have been overpaid.

17.2 Total damage or destruction

If the Premises are at any time during the Term destroyed or damaged to an extent as to be wholly unfit for the occupation and use of the Lessee either Party may be notice in writing to the other of them given within sixty (60) days after the event elect to cancel and terminate this lease. The term will terminate upon such notice being given and the Lessee must vacate the premises and surrender the same to the Lessor, but such termination will be without prejudice however to the liability of the Lessee under this Lease up to the date of termination.

18. Option to renew

If the Lessee at least three (3) months, but not earlier than six (6) months, prior to the date for commencement of the Further Term gives the Lessor a Notice to grant the Further Term and:

- (a) all consents and approvals required by the terms of this Lease or at law have been obtained; and
- (b) there is no subsisting default by the Lessee at the date of service of the Notice in :
 - (i) the payment of Amounts Payable; or
 - (ii) the performance or observance of the Lessee's Covenants,

the Lessor will grant to the Lessee a lease for the Further Term at the Rent and on the same terms and conditions other than this clause in respect of any Further Terms previously taken or the subject of the present exercise and on such other terms and conditions as the Lessor may consider appropriate.

19. Holding over

- (1) If the Lessee remains in possession of the Premises after the expiry of the Term with the consent of the Lessor, the Lessee will be a monthly tenant of the Lessor at a rent equivalent to one twelfth of the Rent for the period immediately preceding expiry of the Term and otherwise on the same terms and conditions of this Lease provided that all consents required under this Lease or at law have been obtained to the Lessee being in possession of the Premises as a monthly tenant.
- (2) In the event the Lessee is permitted to hold over the Premises pursuant to **clause 19.1** the Lessee is obliged during any holding over period to pay any Amounts Payable under this Lease as if the holding over was included in the Term.
- (3) Either the Lessor or the Lessee may give Notice to the other, at any time, to terminate the monthly tenancy and termination will take effect one (1) month after the date of Service of that Notice.

20. Obligation on Termination

20.1 Yielding up

On the expiration of the Term or within one (1) month after the earlier determination of this Lease, the Lessee must:

- (a) surrender peaceably and yield up the Premises to the Lessor:
 - (i) clean;
 - (ii) free from rubbish, debris and other material; and
 - (iii) in a state of repair and condition,

consistent with the performance by the Lessee of the Lessee's Obligations, fair wear and tear excluded, under this Lease and give to the Lessor all keys and security

devices and combinations for locks providing access to or within the Premises held by the Lessee whether or not provided by the Lessor;

- (b) remove all property of the Lessee including the Lessee's signs, fittings, plant, equipment and other articles upon the Premises in the nature of trade or tenant's fixtures brought upon the Premises by the Lessee (except for any fixtures, fittings or any other property which are an integral part of or relate to services on the Premises, unless otherwise required by the Lessor) (**Lessee's Property**); and
- (c) promptly make good to the reasonable satisfaction of the Lessor any damage caused by the removal of the Lessee's Property in accordance with **clause 20.1(b)**.

20.2 Lessor can remove Lessee's property on re-Entry

- (a) On re-entry the Lessor will have the right to remove from the Premises the Lessee's Property (remaining on the Premises or Land) and the Lessee indemnifies the Lessor against all damage caused by the removal of and the cost of storing the Lessee's Property.
- (b) The Lessor may, at any time after the expiration or sooner determination of the Term, give the Lessee a Notice (**Abandonment Notice**) requiring the Lessee to remove all Lessee's Property not previously removed by the Lessee in accordance with the requirement of this clause (**Remaining Items**).
- (c) On the Lessee's receipt of an Abandonment Notice, the Lessee shall have seven (7) days within which to remove all Remaining Items and failing removal within that seven (7) day period, all Remaining Items still on the Land or in the Lessor's custody shall be deemed absolutely abandoned by the Lessee and shall automatically become the absolute property of the Lessor and may be sold by the Lessor or disposed of at any time and without further notice or obligation to the Lessee. The Lessor shall be entitled to keep the proceeds of any sales and those proceeds shall not be taken into account to reduce any arrears, damages or other moneys for which the Lessee may be liable.

20.3 Failure to remove or restore

If the Lessee fails to comply with **clause 20.1**, the Lessor may at its option:

- (a) remove any improvements, fixtures and fittings and recover the cost of doing so from the Lessee as a liquidated debt payable on demand;
- (b) rehabilitate and restore the Premises and recover the cost of doing so from the Lessee as a liquidated debt payable on demand; and
- (c) remove any contaminated soil, where such contamination where such contamination is caused as a result of the Lessee's use and occupation of the Premises, and recover the cost of doing so from the Lessee as a liquidated debt payable on demand.

20.4 Obligations to continue

The Parties' rights and obligations under this **clause 20** will continue, notwithstanding the Termination of this Lease.

21. Assignment, sub-letting and charging

21.1 No assignment or sub-letting without consent

The Lessee must not assign the leasehold estate in the Premises nor sub-let, part with possession, or dispose of the Premises or any part of the Premises without the prior written consent of the Lessor and the Minister for Lands and any other persons whose consent is required under the terms of this Lease or at law.

21.2 Lessor's Consent to Assignment and Sub-letting

Provided all parties whose consent is required, under this Lease or at law, to an assignment or Sub-letting, give their consent and any assignment or sublease is for a purpose consistent with the use of the Premises permitted by this Lease then the Lessor and the Minister for Lands may not unreasonably withhold its consent to the assignment or sub-letting of the leasehold estate created by this Lease if:

- (a) the proposed assignee or sublessee is a respectable and responsible person of good financial standing capable of continuing the permitted use for non-profit making community purposes;
- (b) all Amounts Payable due and payable have been paid and there is no existing unremedied breach, whether notified to the Lessee or not, of any of the Lessee's Covenants;
- (c) the Lessee procures the execution by:
 - (i) the proposed assignee of a deed of assignment; or
 - (ii) the proposed sublessee of a deed of sublease,to which the Lessor is a party and which deed is prepared and completed by the Lessor's solicitors; and
- (d) the assignment contains a covenant by the assignee or sublessee with the Lessor to pay all Amounts Payable and to perform and observe all the Lessee's Covenants.

21.3 Casual Hire

- (1) The Lessee may hire out the Premises or any part thereof on a casual basis only provided:
 - (a) such use is consistent at all times with the Permitted Purpose;
 - (b) the Lessee ensures any hirer complies strictly with the relevant terms of this Lease; and
 - (c) the Lessee obtains the prior written consent for any hire arrangements, which consent may be withheld by the Lessor in its absolute discretion.
- (2) For the purposes of this Lease, "casual hire" means any hire of the Premises by the Lessee to a third party for a period of no more than 150 hours in any calendar month and does not include any formal transfer, assignment or sublease of the Premises.

- (3) The Lessee acknowledges that at all times, including when the Premises are hired to a third party, it remains responsible for the Premises, including without limitation any damage that may be caused or occurs during any hire period.

21.4 Consents of Assignee Supplementary

The covenants and agreements on the part of any assignee will be supplementary to the Lessee's Covenants and will not release the assigning lessee from the Lessee's Covenants.

21.5 Property Law Act 1969

Sections 80 and 82 of the *Property Law Act 1969* are excluded.

21.6 Costs for assignment and sub-letting

If the Lessee wishes to assign or sub-let the leasehold estate created by this Lease the Lessee must pay all reasonable professional and other costs, charges and expenses, incurred by the Lessor or other person whose consent is required under this Lease, of and incidental to:

- (a) the enquiries made by or on behalf of the Lessor as to the respectability, responsibility and financial standing of each proposed assignee or sublessee;
- (b) any consents required under this Lease or at law; and
- (c) all other matters relating to the proposed assignment or sub-letting,

whether or not the assignment or sub-letting proceeds.

21.7 No mortgage or charge

The Lessee must not mortgage nor charge the Premises.

22. Provision of information

22.1 Provision of information

The Lessee agrees to provide to the Lessor:

- (a) a copy of the Lessee's audited annual statement of accounts for each year;
- (b) advice of any changes in its office holders during the Term; and
- (c) any other information on the Lessee reasonably required by the Lessor

22.2 Prior notice of proposal to change rules

The Lessee agrees that it will not change its rules of association under the *Associations Incorporations Act 2015* without notifying the Lessor of its intention to make such a change prior to consideration of the required special resolution.

23. Disputes

- (1) Until the Parties have complied with this **clause 23**, a Party must not commence any action, bring any proceedings or seek any relief or remedy in a court, except seeking interlocutory or equitable relief from a court.

- (2) Subject to **clause 23(6)**, where any dispute arises between the Parties under or in association with this Lease (**Dispute**), a Party may give notice in writing of the dispute to the other Party's representative setting out the material particulars of the Dispute (**Dispute Notice**). Within ten (10) days of receipt of the Dispute Notice, the appointed representative from each Party shall convene a meeting and act in good faith to try to resolve the dispute quickly.
- (3) If the Parties have not:
- (a) resolved the Dispute; or
 - (b) agreed to an alternative method of resolving the Dispute,
- within fourteen (14) days after the Dispute meeting referred to in **clause 23(2)**, either Party may submit the Dispute to mediation.
- (4) If the Dispute is submitted to mediation and the Parties do not, within fourteen (14) days (or any longer period the Parties agree) thereafter, agree on:
- (a) a mediator and the mediator's compensation;
 - (b) the procedure for the mediation; or
 - (c) the timetable of each step of the procedure,
- the mediation will be conducted in accordance with the Australian Commercial Dispute Centre's Mediation Guidelines in force at the time that the dispute is referred.
- (5) If a dispute is not resolved within thirty (30) days after the Dispute Notice or, where a Party has submitted the Dispute to mediation, sixty (60) days after the Dispute Notice (or any longer period the Parties agree), either Party who has complied with this **clause 23** may end this dispute resolution process and commence court proceedings in relation to the Dispute.
- (6) The Parties acknowledge and agree that this **clause 23** does not affect the Lessor's rights under **clause 13** and is not applicable to an event of default by the Lessee.

24. Caveat

The Lessee nor any person on behalf of the Lessee must not lodge any absolute caveat at Landgate against the certificate of title to the Premises.

25. Goods and services tax

25.1 Lessee must Pay

If GST is payable on the Basic Consideration or any part thereof or if the Lessor is liable to pay GST in connection with the lease of the Land or any goods, services or other Taxable Supply supplied under this Lease then, unless the Lessor is liable for the payment of a given Taxable Supply, as from the date of any such introduction or application:

- (a) the Lessor may increase the Basic Consideration or the relevant part thereof by an amount which is equal to the GST Rate; and
- (b) the Lessee shall pay the increased Basic Consideration on the due date for payment by the Lessee of the Basic Consideration.

25.2 Increase in GST

If, at any time, the GST Rate is increased, the Lessor may, in addition to the GST Rate, increase the Basic Consideration by the GST Adjustment Rate and such amount shall be payable in accordance with **clause 25.1(b)**.

25.3 GST invoice

Where the Basic Consideration is to be increased to account for GST pursuant to **clause 25.2** the Lessor shall in the month in which the Basic Consideration is to be paid, issue a Tax Invoice which enables the Lessee to submit a claim for a credit or refund of GST.

26. Notice

26.1 Form of delivery

A Notice to a Party must be in writing and may be given or made:

- (a) by delivery to the Party personally; or
- (b) by addressing it to the Party and leaving it at or posting it by registered post to the address of the Party appearing in this Lease or any other address nominated by a Party by Notice to the other.

26.2 Service of notice

A Notice to a Party is deemed to be given or made:

- (a) if by personal delivery, when delivered;
- (b) if by leaving the Notice at an address specified in **clause 26.1(b)**, at the time of leaving the Notice, provided the Notice is left during normal business hours; and
- (c) if by post to an address specified in **clause 26.1(b)**, on the fourth business day following the date of posting of the Notice.

26.3 Signing of notice

A Notice to a Party may be signed:

- (a) if given by an individual, by the person giving the Notice;
- (b) if given by a corporation, by a director, secretary or manager of that corporation;
- (c) if given by a local government, by the CEO;
- (d) if given by an association incorporated under the *Associations Incorporation Act 2015*, by any person authorised to do so by the board or committee of management of the association; or
- (e) by a solicitor or other agent of the individual, corporation, local government or association giving the Notice.

27. General Provisions

27.1 Lessor's Consent

The Lessee acknowledges and agrees with the Lessor that:

- (a) if the Lessor consents to any matter referred to in this Lease, the Lessor may consent subject to any conditions that it deems reasonably necessary; and
- (b) if the Lessor consents to any matter referred to in this Lease, the Lessee must, to the reasonable satisfaction of the Lessor, comply with any condition imposed by the Lessor.

27.2 Acts by agents

All acts and things which the Lessor is required to do under this Lease may be done by the Lessor, the CEO, an officer or the agent, solicitor, contractor or employee of the Lessor.

27.3 Statutory powers

The powers conferred on the Lessor by or under any statutes for the time being in force are, except to the extent that they are inconsistent with the terms and provisions expressed in this Lease, in addition to the powers conferred on the Lessor in this Lease.

27.4 Severance

If any part of this Lease is or becomes void or unenforceable, that part is or will be severed from this Lease to the intent that all parts that are not or do not become void or unenforceable remain in full force and effect and are unaffected by that severance.

27.5 Variation

This Lease may be varied only by deed executed by the parties subject to such consents as are required by this Lease or at law.

27.6 Moratorium

The provisions of a statute which would but for this clause extend or postpone the date of payment of money, reduce the rate of interest or abrogate, nullify, postpone or otherwise affect the terms of this Lease do not, to the fullest extent permitted by law, apply to limit the terms of this Lease.

27.7 Further assurance

The Parties must execute and do all acts and things necessary or desirable to implement and give full effect to the terms of this Lease.

27.8 Waiver

- (1) Failure to exercise or delay in exercising any right, power or privilege in this Lease by a Party does not operate as a waiver of that right, power or privilege.
- (2) A single or partial exercise of any right, power or privilege does not preclude any other or further exercise of that right, power or privilege or the exercise of any other right, power or privilege.

27.9 Governing law

This Lease is governed by and is to be interpreted in accordance with the laws of Western Australia and, where applicable, the laws of the Commonwealth of Australia.

28. Additional terms, covenants and conditions

Each of the terms, covenants and conditions (if any) specified in **Item 10** of the Schedule are part of this Lease and are binding on the Lessor and the Lessee as if incorporated into the body of this Lease. If there is any inconsistency between the provisions of **Item 10** of the Schedule and the remaining provisions of this Lease, the provisions of **Item 10** of the Schedule will prevail to the extent of that inconsistency.

Schedule

Item 1 Land

Reserve 9610 on Lot 29611 on Deposited Plan 30829 being the whole of the land comprised in Crown Land Title Volume LR3127 Folio 399 (**Lot 29611**); and

Reserve 9610 on Lot 29612 on Deposited Plan 30829 being the whole of the land comprised in Crown Land Title Volume LR3127 Folio 400 (**Lot 29612**).

Item 2 Premises

That portion of Lot 29612 comprising an area as shown hachured in red on the plan annexed hereto as **Annexure 1** together with all buildings, structures, alterations, additions and improvements on that portion of Lot 29612 or erected on that portion of Lot 29612 during the Term.

Item 3 Term

21 years commencing on the Commencement Date and expiring on 30 August 2042.

Item 4 Further Term

Nil

Item 5 Commencement Date

The date of the consent of the Minister for Lands being 31 August 2021.

Item 6 Rent

One dollar (\$1) per annum, payable annually in advance with the first payment due on the Commencement Date and reviewed annually in accordance with the terms of this Lease.

Item 7 Permitted Purpose

Recreation.

Item 8 Public Liability Insurance

Twenty million dollars (\$20,000,000.00).

Item 9 Rent Review Date

CPI Review

On the first anniversary of the Commencement Date and annually on that date for the duration of the Term, Further Terms and any period of holding over a CPI Review will be undertaken, except for the dates on which a Market Review is required which are set out below.

Market Review

On the Commencement Date of the Further Term.

Item 10 Additional terms and conditions

Nil

Signing page

EXECUTED by the parties as a Deed

2022

THE COMMON SEAL of THE SHIRE OF WICKEPIN was hereunto affixed by the authority of a resolution of the Council in the presence of:

Signature of President

(Print Full Name)

Signature of Chief Executive Officer

(Print Full Name)

THE COMMON SEAL of LAKE YEALERING BOWLING CLUB was hereunto affixed pursuant to the constitution of the Lessee in the presence of each of the undersigned each of whom hereby declares by the execution of this document that he or she holds the office in the Lessee indicated under his or her name-

Office Holder Sign

Office Holder Sign

Name:

Name:

Address:

Address:

Office Held:

Office Held:

Annexure 1 – Plan



Annexure 2 – Minister for Lands Consent



Department of Planning,
Lands and Heritage

Land Use Management

Our ref: 00416-1905 Job: 2102076
Enquiries: Terri Newman, ph 6552 4663
Fax: 6118 8116

31 August 2021

Shire of Wickepin
PO Box 19
WICKEPIN WA 6372

By email only: ijlong@mcleods.com.au

REQUEST FOR SECTION 18 MINISTERS CONSENT TO PROPOSED LEASE, PART RESERVE 9610, PART LOTS 29611 & 29612 ON DEPOSITED PLAN 30829, SEWELL STREET, YEARLING– SHIRE OF WICKEPIN

Thank you for your correspondence seeking permission of the Minister for Lands to provide consent to the Lease between the Shire of Wickepin (Lessor) and Lake Yearling Bowling Club Inc. (Lessee).

In accordance with section 18 of the *Land Administration Act 1997* (LAA) the Minister for Lands approval is granted on the condition that the final Lease document executed by the parties is on all terms and conditions as that provided to Department of Planning Lands and Heritage (DPLH) by email on 23 August 2021. If the final document executed by the parties is not on the approved terms, then it may be void under section 18 LAA.

Please note that this approval is for the purposes of section 18 LAA only and does not constitute an endorsement as to the terms and effect of the document. DPLH cannot provide any advice in respect of the Lease and recommends that each party obtain their own independent advice as to their rights and obligations under the document.

This approval is subject to the registration requirements of the *Transfer of Land Act 1893*. You will need to provide a copy of this letter to Landgate if the document is to be lodged for registration at Landgate.

Should you have any enquiries please don't hesitate to contact me on any of the above details.

Yours sincerely


Terri Newman
Senior Land Officer – L4
Lodgement
Land Use Management

Gordon Stephenson House, 140 William Street Perth Western Australia 6000 Locked Bag 2506, Perth Western Australia 6001
Telephone (08) 6552 4400 Facsimile (08) 6552 4417 Freecall: 1800 735 784 (Country only)
Email: info@lands.wa.gov.au Website: www.lands.wa.gov.au
ABN: 68 565 723 484