

**LEASE**

PART RESERVE 29167

(Lot 312 on Deposited Plan 210825 and  
Lot 734 on Deposited Plan 217489)

**SHIRE OF WYNDHAM EAST KIMBERLEY**

("Lessor")

AND

**LAKE KUNUNURRA GOLF CLUB INC**

("Lessee")

DRAFT

## CONTENTS

<b>1. Definitions and Interpretation</b> .....	<b>7</b>
1.1 Definitions.....	7
1.2 Interpretation .....	12
1.3 Performance of Functions by Minister .....	15
1.4 Approval by Minister .....	15
1.5 Land Administration Act .....	15
<b>2. Operative part</b> .....	<b>15</b>
2.1 Lease of Leased Premises .....	15
2.2 Quiet enjoyment.....	15
2.3 Lessee responsible as if owner .....	16
2.4 Conditions Precedent .....	16
2.5 Discretion of the Lessor in its capacity as Relevant Authority.....	16
2.6 Lessee Buildings and Fixtures .....	16
<b>3. Reservation of Lessor's rights</b> .....	<b>17</b>
3.1 Improvements to Leased Premises.....	17
3.2 Right to enter.....	17
3.3 Granting easements etc.....	18
3.4 Re-classification of fixtures and fittings.....	18
3.5 Managing Agent.....	18
<b>4. Rent</b> .....	<b>18</b>
5.1 Review on Rent Review Date.....	18
5.2 CPI Rent Review .....	18
5.3 Payment of Reviewed Rent.....	19
5.4 Not to cause Rent reduction.....	19
<b>6. Rates and Taxes</b> .....	<b>19</b>
<b>7. Lessee to pay for Services</b> .....	<b>20</b>
<b>8. Use of Leased Premises and Facilities</b> .....	<b>20</b>
8.1 Authorised Use .....	20
8.2 Licenses and Limitations .....	22
8.3 Comply with Directions.....	22
<b>9. Security of Leased Premises</b> .....	<b>22</b>
<b>10. Maintenance and Works</b> .....	<b>22</b>
10.1 Obligation to Maintain.....	22

10.2	Alteration and Substantial Works .....	23
10.3	Standard for Maintenance and Works .....	24
10.4	Remove Non-approved Works .....	24
10.5	Structural Maintenance .....	24
<b>11.</b>	<b>Positive covenants .....</b>	<b>24</b>
11.1	Costs and Expenses .....	24
11.2	Reimburse Lessor Expenses .....	25
11.3	Report to Lessor .....	25
11.4	Comply with Laws .....	25
11.5	Interest.....	25
<b>12.</b>	<b>Negative covenants .....</b>	<b>25</b>
<b>13.</b>	<b>Lessee's Obligation to effect insurances .....</b>	<b>26</b>
<b>14.</b>	<b>Indemnities .....</b>	<b>26</b>
14.1	General indemnity .....	26
14.2	Nature of indemnity.....	27
<b>15.</b>	<b>Assignment.....</b>	<b>27</b>
15.1	No assignment .....	27
15.2	Property Law Act excluded .....	27
15.3	Lessor may consent to assignment.....	27
15.4	Lessor may consent to sublease .....	28
15.5	Lessor may consent to charge .....	29
15.6	Compliance with Acts .....	29
15.7	Requirements before approval.....	29
<b>16.</b>	<b>Damage, Destruction or Resumption .....</b>	<b>29</b>
16.1	Definitions.....	29
16.2	Abatement .....	30
16.3	Either Party May Terminate.....	31
16.4	Lessee May Terminate .....	31
16.5	Exceptions .....	31
16.6	Lessor may Terminate.....	31
16.7	Antecedent Breaches.....	31
16.8	Dispute Resolution.....	32
16.9	Lessor Not Obligated to Reinstate .....	32
16.10	Proceeds of Insurance.....	32
16.11	Resumption of Leased Premises .....	32
<b>17.</b>	<b>Limit of Lessor's liability .....</b>	<b>32</b>
17.1	No warranties or representations .....	32

17.2	Lessor Not Liable.....	33
17.3	Lessor only liable while Primary Interest Holder .....	33
17.4	Lessee acts at own risk.....	33
<b>18.</b>	<b>Default .....</b>	<b>33</b>
<b>19.</b>	<b>Lessor’s powers on default .....</b>	<b>34</b>
19.1	Lessor’s right of possession .....	34
19.2	Lessor may remedy Lessee’s default .....	34
19.3	No prejudice of Lessor's rights.....	35
19.4	Exercise of rights by Lessor .....	35
<b>20.</b>	<b>Essential terms .....</b>	<b>35</b>
20.1	Breach of Essential Terms .....	35
20.2	Damage for Breach of Essential Terms .....	35
20.3	Lessor’s Entitlement to Damages .....	35
20.4	Lessor to Mitigate Damages .....	36
20.5	Calculation of Damages .....	36
<b>21.</b>	<b>Termination .....</b>	<b>36</b>
21.1	Yield up Leased Premises.....	36
21.2	Remove Lessee's Buildings and Fixtures .....	36
21.3	Making Good of Leased Premises on Termination .....	37
21.4	Lessor Can Make Good .....	37
21.5	Dealing with Lessee's property not removed at Termination .....	37
21.6	Lessee to continue to pay Rent and outgoings.....	37
<b>22.</b>	<b>Option of renewal .....</b>	<b>38</b>
<b>23.</b>	<b>Holding Over .....</b>	<b>38</b>
<b>24.</b>	<b>CEO and Lessor as Attorney .....</b>	<b>38</b>
<b>25.</b>	<b>Trustee Provisions .....</b>	<b>39</b>
<b>26.</b>	<b>Special clauses.....</b>	<b>39</b>
<b>27.</b>	<b>Environmental Matters .....</b>	<b>39</b>
27.1	Lessee’s Environmental Covenants.....	39
27.2	Remediate Contamination .....	40
27.3	Environmental Indemnity .....	41
27.4	Event of Default and Essential Term.....	41
27.5	Definitions.....	41
<b>28.</b>	<b>Caveats and registration of Lease.....</b>	<b>43</b>
28.1	Registration.....	43
28.2	Lessee must withdraw Caveat and any Registered Encumbrances.....	44
<b>29.</b>	<b>Termination for Community Benefit.....</b>	<b>44</b>

<b>30. Miscellaneous</b> .....	<b>45</b>
30.1 Lessee not to permit prohibited matters.....	45
30.2 Cost of Complying with Obligations.....	45
30.3 Schedules .....	45
30.4 Lessor's consent .....	45
30.5 Proper Law and Jurisdiction .....	45
30.6 Time for payment .....	45
30.7 Time of the essence .....	45
30.8 Certificates .....	45
30.9 Exercise of rights by Lessor .....	46
30.10 Lessor may act by agent.....	46
30.11 Variation.....	46
30.12 Giving of notice .....	46
30.13 No moratorium .....	47
30.14 Further assurances.....	47
30.15 Effect of execution .....	47
30.16 Severance.....	47
30.17 Goods and services tax .....	47
30.18 Entire Agreement.....	48
30.19 Headings .....	48
30.20 Termination .....	48
<b>31. PPSA</b> .....	<b>48</b>
31.1 Interpretation .....	48
31.2 Further assurance .....	49
31.3 No requirement for PPSA notices.....	49
31.4 Priority of the Lessor's interest.....	49
31.5 Enforcement .....	49
31.6 Negative undertakings.....	50
31.7 The Lessor's interest remains unaffected.....	50
31.8 Notices to the Lessor .....	50
<b>SCHEDULE 1</b> .....	<b>52</b>
<b>SCHEDULE 2</b> .....	<b>54</b>
<b>SIGNING PAGE</b> .....	<b>59</b>
<b>ANNEXURE A – PLAN</b> .....	<b>62</b>



(c) any person claiming under or through the Lessee

“Authorised Use” means the use specified in item 1 of Schedule 1.

“Building” means

- (a) any building, improvement or other permanent structure;
- (b) all plant, machinery, fixtures, fittings, furnishings and equipment; and
- (c) all Facilities,

hereafter constructed, made, erected, installed or situated on the Leased Premises.

“Business Day” means a day other than a Saturday, Sunday or State public holiday in Western Australia.

“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 commencement date specified in item 2 of Schedule 1.

“Committee” means the management committee of the Lessee.

“Conditions Precedent” means the conditions referred to in clause 2.4(a).

“Consumer Price Index” means the consumer price index compiled by the Australian Bureau of Statistics for the Perth (Capital City) Area (All Groups) and “CPI” has a corresponding meaning. If the CPI is discontinued or in the Lessor’s opinion does not reflect the increase in the cost of living for the City of Perth, *the index which will be used will be an index specified by the President of the Institute of Chartered Accountants as an index which reflects the increase in the cost of living for the City of Perth.*

“Council” means the council of the Lessor.

“Current CPI” means the Consumer Price Index number last published before the relevant Rent Review Date.

“End Date” means the date specified in item 3 of Schedule 1.

“Event of Default” means the events specified in clause 18 of this Lease and clause 3.8(a) of the special clauses to this Lease.

“Facilities” means the water supply, drainage, sewerage, plumbing, gas, electrical, telecommunications and data fixtures, fittings and appliances, in or on the Land or the Leased Premises.



“Final Period” means the period ending on Termination and commencing on the 1 July prior to Termination.

“Financial Year” means a year beginning on 1 July and ending on the following 30 June.

“First Period” means the period commencing on the Commencement Date and ending on the immediately subsequent 30 June.

“Further Term” means each further term specified in item 9 of Schedule 1.

“LAA” means the *Land Administration Act 1997* (WA).

“Land” means the land described in item 4(a) of Schedule 1.

“Laws” means all statutes, rules, regulations, proclamations, ordinances or by-laws present or future and includes applicable Australian Standards and Codes of Practice.

“Lease” means this deed and the Schedules and, where applicable, any appendices, plans or other attachments to this deed as amended from time to time.

“Lease Year” means a Financial Year or any other period of twelve (12) months nominated by the Lessor, and includes, where appropriate, the First Period and the Final Period.

“Leased Premises” means that part of the Land, together with all Buildings and improvements on the Land (if any), as described in Item 4(b) of Schedule 1.

“Lessee's Fixtures” means each fixture and fitting installed by the Lessee in or on the Leased Premises with the Lessor's consent which is not, or is not re-classified as, a Lessor's Fixture in accordance with this Lease, as described in item 13 of Schedule 1.

“Lessee's Obligations” means each covenant, obligation and duty contained or implied in this Lease or required by law to be performed by the Lessee, the Guarantors, or any Authorised Persons.

“Lessee's Rights” means the Lessee's rights under this Lease or implied by law.

“Lessee's Works” means the development of the Leased Premises by the Lessee in accordance with:

- (a) the Approvals;
- (b) the Plans and Specifications; and
- (c) the terms and conditions set out in this Lease.

“Lessor's Chattels” means the furniture in or on the Leased Premises, including those described in item 12 of Schedule 1.

“Lessor's Fixtures” means the Lessor's fixtures and fittings in or on the Leased Premises as described in item 11 of Schedule 1

“Lessor's Works” means any construction, refurbishment, upgrade and

renovation works carried out or to be carried out on or to the Leased Premises as notified to the Lessee by the Lessor from time to time.

"Lessor's Rights" means the rights of the Lessor under this Lease or implied by law, including without limitation the benefit of the Lessee's Obligations.

"Maintain" includes maintain, repair, renovate, replace, decorate and refurbish, and "Maintenance" and "Maintaining" have equivalent meanings.

"Minister" means the Minister for Lands, a body corporate under section 7 of the LAA.

"Party" means a party to this Lease.

"Plans and Specifications" means all plans, specifications and working drawings in relation to the Lessee's Works as prepared by or on behalf of the Lessee and in the form approved by the Lessor and all Relevant Authorities.

"Plant and Equipment" means the plant and equipment used in connection with the provision of any Services or the heating, cooling, lighting, power or plumbing for the Leased Premises.

"Policy" means the Shire of Wyndham East Kimberley's Council Policy Number CP/PMG-3780 "Leasing of Council Managed Reserve Land". This includes any superseding policy or substitute for this policy.

"Previous CPI" means the Consumer Price Index number last published before a date 12 months before the relevant CPI Rent Review Date, or if an actuary is appointed under this Lease to determine an index, the number certified by that actuary.

"Public Building" has the meaning given to it in section 173 of the *Health Act 1911* (WA).

"Rate" means the interest rate specified in item 5 of Schedule 1.

"Rates and Taxes" means:

- (a) local government rates and charges including but not limited to, rubbish removal rates and charges;
- (b) land tax (including metropolitan region improvement tax) on a single holding basis;
- (c) water, drainage and sewerage rates, including but not limited to meter rents, charges for the disposal of storm water and excess water charges; and
- (d) rates, taxes, charges, duties and fees levied, charged, assessed or imposed by a Relevant Authority in respect of any part of the Leased Premises or the ownership or occupation of any part of the Leased Premises, together with any related interest, penalties, fines and expenses in connection with them but excluding any tax imposed by the *Income Tax Assessment Act 1936* (Cth) or the *Income Tax Assessment Act 1997* (Cth).

“Relevant Authority” means any government, statutory, public or other authority or body having jurisdiction over the Leased Premises or any matter or thing relating to the Leased Premises.

“Rent” means the rent specified in item 6 of Schedule 1 as reviewed in accordance with this Lease.

“Rent Review Date” means each rent review date as specified in item 7 of Schedule 1.

“Requirements” means any requirements, notices, orders or directions of any Relevant Authority.

“Schedule” means a schedule to this Lease.

“Services” means any telecommunication, data, electricity, gas, oil, fuel, water or other commodity, facility or service in, to or on the Leased Premises or otherwise serving the Leased Premises or, where applicable, any other part of the Land.

“State” means the State of Western Australia.

“Term” means the term specified in item 8 of Schedule 1 and, where appropriate, any Further Term granted under this Lease.

“Termination” means the expiry of the Term by effluxion of time or by termination in accordance with this Lease.

“Valuer” means a valuer appointed in accordance with clause 16.

“Works Conditions” means in respect of any Maintenance or works carried out by the Lessee, the Lessee must:

- (i) do so:
  - (i) at the Lessee’s cost;
  - (ii) in a safe and proper workmanlike manner and to the satisfaction of the Lessor, acting reasonably;
  - (iii) using only good quality materials;
  - (iv) in full compliance with:
    - (A) and only after obtaining the approvals of all Relevant Authorities;
    - (B) and subject to the conditions of the Lessor’s consent in relation to those works;
    - (C) plans and specifications approved by the Lessor;
    - (D) all Requirements and Laws;
  - (v) using a qualified and competent contractor engaged by the Lessee (who has a public liability policy of not less than \$20,000,000.00 and appropriate contract construction risk, workers compensation and other usual insurances, which insurance must note the rights and interest of the Lessor

and evidence of which must be provided to the Lessor);

- (ii) ensure that the Lessee and all its employees, agents, contractors and workmen employed in executing the relevant works:
  - (i) duly and punctually comply with the reasonable directions of the Lessor in relation to their conduct in and access to the Leased Premises and when going to and from the Leased Premises; and
  - (ii) do not do or permit any act or thing to be done which may be a nuisance or cause damage, disturbance or offence to the Lessor or any other person;
- (iii) if required by the Lessor, erect and maintain a fence around the Leased Premises during the erection and completion of the works and ensure that such fence is sufficiently sound, high and secure to prevent entry upon the Leased Premises by unauthorised persons and members of the public;
- (iv) clean up the Leased Premises progressively during the construction, installation or demolition of the works as the case may be and promptly remove from the Leased Premises all rubbish and waste arising from such works; and
- (v) pay on demand to the Lessor:
  - (i) all the reasonable costs of the Lessor in connection with the relevant works including the Lessor's administrative and other reasonable costs of giving consent and the fees of any architect or other consultant used by the Lessor in connection with the relevant works EXCEPT THAT such costs do not include any costs or expenses incurred by the Lessor or entitled to be recovered by the Lessor in its capacity as the local government charged with the responsibility of approving such works; and
  - (ii) all costs and expenses incurred or arising as a consequence of any disruption caused by the Lessee or the Lessee's contractors on the Leased Premises in carrying out the relevant works.

"Written Law" has the same meaning given to that term in the *Interpretation Act 1984 (WA)*.

## 1.2 Interpretation

The following interpretations shall apply:

- (a) words importing the singular shall include the plural and vice versa, words importing gender shall include the masculine, feminine and neuter genders and words importing persons shall include individuals,

firms, associations, partnerships, government authorities, incorporated and unincorporated entities and corporations;

- (b) if two (2) or more persons by this Lease undertake an obligation or make or give any warranty or undertaking, or waive any right or entitlement, they shall be bound both jointly and severally;
- (c) a reference to this Lease includes a reference to any Schedule, recital, part, clause, sub-clause, paragraph or Annexure in or to this Lease, and in or to this Lease as amended, novated, supplemented, varied or replaced from time to time, and vice versa;
- (d) a reference to a statute, Act or Code, regulation or by-law or to any section, sub-section or paragraph thereof, includes any statutory amendment, replacement, consolidation, modification or re-enactment thereof from time to time, and for the time being in force, and all ordinances, by-laws, regulations, and other statutory instruments issued under them;
- (e) where the day or last day for doing an action or for the payment of any money or on which any entitlement is due to arise or a notice is deemed served is not a Business Day, the day or last day for doing that act or payment of that money or on which that entitlement arises or notice is deemed served, shall be deemed to be the next Business Day;
- (f) where any requirement, calculation or payment of money might otherwise fall to be performed or paid on the 29<sup>th</sup>, 30<sup>th</sup> or 31<sup>st</sup> day of a month which does not contain such a date, then references thereto shall be construed as references to the last day of that month;
- (g) a reference to any Party includes that Party in its own right and in its capacity as trustee of any trust (whether specified or not), and also includes that Party's executors, administrators, successors, substitutes and permitted assigns in accordance with this Lease, including any person taking by way of novation;
- (h) all headings and any table of contents or index have been inserted for convenience purposes only and shall not affect the interpretation hereof;
- (i) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of such word or phrase shall have a corresponding meaning;
- (j) all references to monetary amounts are references to Australian dollars unless stated otherwise;
- (k) a reference to:
  - (i) a right includes a benefit, remedy, discretion, authority or power;
  - (ii) an obligation includes a warranty or representation;
  - (iii) a failure to observe or perform an obligation includes a breach of warranty or representation;

- (iv) provisions or terms of this Lease include a reference to both express and implied provisions or terms;
- (v) writing includes any means or mode of representing or reproducing words in a tangible and permanently visible form, and includes facsimile transmissions.
- (vi) signature and signing includes due execution by a corporation or other relevant entity;
- (vii) a month means a calendar month;
- (viii) conduct includes, without limitation, an omission, statement or undertaking, whether or not in writing; and
- (ix) an amount for which a person is contingently liable includes, without limitation, an amount which that person may become actually or contingently liable to pay if a contingency occurs, whether or not that liability will actually arise;
- (l) each paragraph or sub-paragraph in a list is to be read independently from the others in that list;
- (m) no rule of construction of documents shall apply to the disadvantage of a Party, on the basis that that Party put forward this document or any relevant part of it;
- (n) “including” and similar expressions are not words of limitation;
- (o) a covenant, agreement, representation or warranty in favour of two (2) or more persons is for the benefit of them jointly and severally;
- (p) a reference to a statutory, professional or industry body includes a reference to a successor or substitute for that body;
- (q) unless repugnant to the context, a covenant by a Party to do or omit to do anything includes a covenant by an Authorised Person to do or omit to do that thing, and the Party is liable for all acts or omissions of an Authorised Person;
- (r) a general description of any matter or thing whatever shall not be read down if followed by any specific examples of that matter or thing;
- (s) derivatives of a word or expression defined in clause 1.1 have a corresponding meaning to that assigned to it in that clause;
- (t) a reference to “Lessor” is a reference to the Shire of Wyndham East Kimberley only in its capacity as Primary Interest Holder of the Leased Premises and not in its capacity as a Relevant Authority, and separate and distinct from its capacity as a Relevant Authority; and
- (u) covenants implied by Laws are not incorporated in the Lease, unless the relevant Law provides that certain covenants are to be implied and cannot be excluded by agreement.

### 1.3 Performance of Functions by Minister

- (a) All acts and things which the Lessor is required or empowered to do under this Lease is done under section 46 read together with section 18 of the LAA.
- (b) Where pursuant to this Lease payments and rights accrue to the Minister or obligations are imposed on the Minister the same are for the benefit and burden respectively of the Lessor unless the context otherwise requires.

### 1.4 Approval by Minister

- (a) In any case where under this Lease the doing or executing of any act matter or thing by the Lessor is dependent on the approval or consent of the Minister, such approval or consent will not be effective unless it is given in writing and may be given or withheld by the Lessor in the reasonable discretion or Lessor's absolute discretion and may be given subject to such conditions as the Lessor may reasonably determine unless otherwise provided in this Lease.
- (b) The Lessee agrees that any failure by the Lessee to comply with or perform a condition imposed under clause (a) will constitute a breach of a condition or covenant under this Lease.

### 1.5 Land Administration Act

The Lessor and the Lessee agree that the provisions of:

- (a) the LAA relating to Leases of Crown land granted under section 79 of the LAA apply to the Lessee; and
- (b) this Lease does not in any way affect alter or derogate from the Lessor's or the Minister's rights or powers conferred under the LAA.

## **2. Operative part**

### 2.1 Lease of Leased Premises

In consideration of the Lessee agreeing to duly pay the Rent and other money payable under this Lease and to duly observe and perform the Lessee's Obligations, the Lessor leases the Leased Premises and grants the Lessee's Rights to the Lessee for the Term commencing on the Commencement Date subject to the reservation of the Lessor's Rights under this Lease.

### 2.2 Quiet enjoyment

The Lessor warrants that the Lessor has full capacity to grant this Lease and, if the Lessee duly pays the Rent and other money payable under this Lease and duly observes and performs the Lessee's Obligations, the Lessor agrees that the Lessee may quietly hold the Leased Premises and enjoy the Lessee's Rights during the Term without any disturbance from the Lessor or any person lawfully claiming through the Lessor, except to the extent that interruption, disturbance or interference arises because of the exercise of the Lessor's rights or is otherwise permitted by any provision of this Lease.

### 2.3 Lessee responsible as if owner

The Lessee is subject to the same responsibilities relating to persons and property during the Term as if the Lessee were the owner of the Leased Premises.

### 2.4 Conditions Precedent

- (a) This Lease is subject to and expressly conditional upon:
- (i) the Lessee obtaining all necessary Approvals to undertake the Lessee's Works from all Relevant Authorities, including the prior consent of the Lessor ("Development Condition"); and
  - (ii) the Minister approving this Lease under the LAA
- (b) The Parties covenant and agree that:

#### Best endeavours

- (i) where relevant, the Parties will each use their best endeavours to satisfy the Conditions Precedent;

#### Development Condition

- (ii) the Lessee will bear all the costs associated with satisfying or attempting to satisfy the Development Condition, including but not limited to any application fees; and
- (iii) if any Approval:
  - (A) is refused; or
  - (B) granted subject to a condition with which the Lessee in its reasonable opinion is unable to comply with, and the Lessee within twenty eight (28) days after being notified of the condition elects, by notice in writing to the Lessor, to withdraw from the Lease,

THEN this Lease but for this clause 2.4 ceases to have effect and no Party has any claim against any other Party.

### 2.5 Discretion of the Lessor in its capacity as Relevant Authority

The parties agree and acknowledge that nothing in this Lease shall fetter or be construed as an attempt to fetter the discretion or the powers of the Lessor in its capacity as a Relevant Authority under any Written Law and in particular does not fetter the Lessor in its capacity as a Relevant Authority with regard to the approval or imposition of conditions on any approval required for the development of the Leased Premises or carrying out of the Lessee's Works in accordance with this Lease.

### 2.6 Lessee Buildings and -Fixtures

The parties agree and acknowledge the Lessee has constructed -Buildings and Fixtures on the Premises as defined under clause 1.1 and are the asset of the Lessee as described in item 13 of Schedule 1.



### 3. Reservation of Lessor's rights

Without limiting any other provision of this Lease, the Lessor reserves the following rights:

#### 3.1 Improvements to Leased Premises

- (a) The Lessor may at any time carry out improvements to the Leased Premises, including, without limitation:
  - (i) construct amenities for use by the public, including public toilets, on the Leased Premises;
  - (ii) construct other new structures on the Leased Premises;
  - (iii) alter, add to, extend, reduce the size of, or otherwise modify, structures on the Leased Premises; and
  - (iv) any other Lessor's Works,
- (b) In exercising the rights in subclause 3.1(a), the Lessor shall:
  - (i) Consult with the Lessee prior to any improvements alterations or construction being carried out; and
  - (ii) use the Lessor's reasonable endeavours not to cause any undue interference with the Authorised Use.

#### 3.2 Right to enter

- (a) The Lessee shall permit the Lessor to enter the Leased Premises at all reasonable times on the giving of reasonable notice, or immediately in the case of emergency, with or without workmen and materials to:
  - (i) view the state of repair of the Leased Premises and to ensure compliance with the Lessee's Obligations;
  - (ii) comply with any requirement or order of any local government or other statutory authority;
  - (iii) carry out any maintenance, modification, installation or extension to the Leased Premises or the Lessee's Building and Fixtures and the Plant and Equipment or cables, pipes or wires within the Leased Premises or the Lessee's Building and Fixtures; and
  - (iv) view the Leased Premises with any persons interested in the Leased Premises;  
except that the Lessor shall use the Lessor's reasonable endeavours not to cause any undue interference with the conduct of the Authorised Use;
- (b) the Lessor may enter the Leased Premises at any time for the purpose of doing anything which should have been done by the Lessee under this Lease but which has not been done or has not been done properly; and
- (c) the Lessor's right of entry under this clause 3.2 allows the Lessor to

enter in the Leased Premises with or without workmen or other interested persons and, in the case of works that are required to be undertaken, with all necessary plant, equipment and materials to effect those works.

### 3.3 Granting easements etc.

The Lessor may grant easements of support or any other easements or similar rights over any part of the Leased Premises or dedicate, transfer or otherwise deal with any part of the Leased Premises in favour of another person for any reason whatsoever except that the Lessor shall not without the Lessee's prior consent do anything which will substantially and permanently derogate from the quiet enjoyment of the Lessee's Rights by the Lessee.

### 3.4 Re-classification of fixtures and fittings

Not Applicable

### 3.5 Managing Agent

The Lessor may appoint a Managing Agent to manage the Leased Premises and represent the Lessor in relation to this Lease. If the Lessor appoints a Managing Agent, the Managing Agent may exercise the Lessor's rights and powers under this Lease. The Lessor may at any time vary or terminate the authority of the Managing Agent. Any decision made by the Lessor overrides any decision made by the Managing Agent if there is any inconsistency between those decisions.

## **4. Rent**

The Lessee must pay the Rent to the Lessor in the manner specified in item 6 of Schedule 1 at the Lessor's address in this Lease or any other address stipulated by the Lessor or by any other method specified by the Lessor, including without limitation by direct bank deposit, without deduction or set-off (including but not limited to equitable set-off) except that the first and last payments will be apportioned on a daily basis in respect of periods of less than a month, and the first payment is due on the Commencement Date.

## **5. Rent review**

### 5.1 Review on Rent Review Date

- (a) On each scheduled Rent Review Date, the Rent shall be reviewed in the manner set out in the following clauses of this clause 5.

### 5.2 CPI Rent Review

- (a) With effect from each Rent Review Date, the Rent shall be reviewed so that it is the greater of the Rent Payable immediately before the relevant Rent Review Date and the amount of Rent in the sum calculated on the basis of the following formula:

$$\mathbf{RR = (R \times CCPI) \text{ divided by } PCPI}$$

Where:

- “RR” = the annual Rent as reviewed;  
“R” = the annual Rent payable immediately before the

relevant Rent Review Date;

“CCPI” = the Current CPI; and

“PCPI” = the Previous CPI.

(b) Determination of Current CPI or Previous CPI

If for the purposes of a rent review, the Consumer Price Index number is not published or, in the opinion of the Lessor there is a material change in the basis on which the Consumer Price Index is determined, or no Consumer Price Index number was published in the twelve (12) to fifteen (15) month period before the relevant Rent Review Date for the purposes of determining Previous CPI, then the Lessor may appoint an actuary from the Fellows of the Institute of Actuaries of Australia to determine:

- (i) in respect of Current CPI, an index number which reflects the prevailing levels of prices for the Perth metropolitan area at that Rent Review Date; and
- (ii) in respect of Previous CPI, an index number which reflects the prevailing levels of prices for the Perth metropolitan area at a date twelve (12) months prior to that Rent Review Date;

and the actuary's determination will be binding on the Lessor and the Lessee and the Lessor and the Lessee will pay the actuary's costs in equal shares.

5.3 Payment of Reviewed Rent

- (a) The Lessee will be liable to pay the reviewed annual Rent from the relevant Rent Review Date whether or not the Lessor has notified the Lessee of the amount to which the annual Rent has been varied.
- (b) The failure of the Lessor to give notice of the reviewed annual Rent before a Rent Review Date does not preclude the Lessor from giving such a notice in respect of that Rent Review Date at any later time.
- (c) If the Lessor has not given notice of the reviewed annual Rent to the Lessee and the Lessee continues to pay Rent at the rate of the current annual Rent until the Lessor notifies the Lessee of the reviewed annual Rent, the Lessee will not for that reason only be in default for non-payment of Rent provided that when the Lessor notifies the Lessee of the amount of the reviewed annual Rent, any necessary adjustment is to be made within twenty eight (28) days of service of the rent review notice.

5.4 Not to cause Rent reduction

The Lessee shall not by any act or omission cause, directly or indirectly, the Rent to be reduced or impose on the Lessor any liability of the Lessee under this Lease unless obliged to do so by any Laws or with the consent of the Lessor.

**6. Rates and Taxes**

- 6.1 The Lessee must pay to the Lessor within twenty eight (28) days, or if the demand is made to the Lessee by any Relevant Authority then to that

authority on demand in full all Rates and Taxes assessed or imposed by any Relevant Authority or other service provider in respect of the Premises.

6.2 Except in the case of manifest error, a statement issued by the Lessor under clause 6.1 will be prima facie evidence of the matters stated in that statement.

6.3 If the year or other period in respect of which any particular Rate or Tax is payable does not coincide with the Lease year, the amount the Lessee is to pay in the first year and last year of the Lease will be adjusted proportionally.

## **7. Lessee to pay for Services**

### Services separately assessed

7.1 The Lessee must pay to the Lessor or, if demand is made by a service provider, or Relevant Authority, to that provider or Relevant Authority, all amounts separately charged or assessed in respect of the Leased Premises or the Lessee for or in connection with Services to or for the benefit of the Leased Premises or the Lessee, including supply charges and the cost of installation of any meter, wiring or other device necessitated by the use of a Service.

### Bulk supplies Services

7.2 If the Lessor supplies any Services to the Leased Premises the Lessee must on demand pay to the Lessor the amount which the Lessee would have been charged by the original service provider, or Relevant Authority if the Services had been supplied to the Lessee directly together with an administrative charge of no more than twenty per cent (20%) of the amount charged by the original service provider, or Relevant Authority.

7.3 The Lessee must observe and comply with any conditions of supply of Services by the Lessor, or where no conditions of supply are imposed by the Lessor, observe and comply with the conditions of supply of Services imposed by the service provider or any Relevant Authority.

7.4 If any Service is not provided by the Lessor, the Lessee is responsible to make the Lessee's own arrangements at the Lessee's own cost for the supply of the Service to the Leased Premises and all associated Facilities. For the avoidance of doubt, the Lessor is not obliged to provide or to facilitate the procuring of any Services or Facilities to or for the Leased Premises.

### Services not separately assessed

7.5 The Lessee must pay to the Lessor, or as the Lessor directs, the proportion of ninety per cent (90%) of all amounts charged or assessed in respect of the Land for or in connection with Services to or for the benefit of the Land or the Lessee, including supply charges and the cost of installation of any meter, wiring or other device necessitated by the use of Service.

## **8. Use of Leased Premises and Facilities**

### 8.1 Authorised Use

The Lessee shall not:

- (a) use the Leased Premises for any purpose other than the Authorised Use specified in item 1 of Schedule 1 or for any purpose for which the Leased Premises was not designed or designated; and
- (b) use each Facility, Service, item of Plant and Equipment, Lessor's Chattels, the Lessee's Building and Fixtures for a purpose for which it was not designed or designated.

The Lessee Covenants with the Lessor as follows:

#### 8.1.1 Maintenance

To maintain, rehabilitate and stabilise the Foreshore Areas, Access Areas and the Leased Premises as may be necessary to permit continuous access by the public to infrastructure and to approved structures upon the Land.

#### 8.1.2 Foreshore Bank

Not to modify, or permit the modification of, the foreshore bank of the Foreshore Area except in accordance with the Improvements referred to in Schedule 2.

#### 8.1.3 Improvements and Additions

Not to erect, construct, build, install or bring any buildings or structures of a permanent nature on the Leased Premises or make any other alterations, additions or improvements on the Leased Premises except in accordance with Schedule 2 of the Lease.

#### 8.1.4 Foreshore Vegetation

Not to remove any vegetation from the Leased Premises or the Foreshore Area EXCEPT:

- (i) in accordance with a foreshore management/rehabilitation plan approved by the Lessor (if required);
- (ii) exotic species considered to be pest or weed species;
- (iii) in the case of native vegetation, with the prior written consent of the Lessor and all approvals required by law; and
- (iv) by mechanical means rather than chemical application methods to the extent practicable.

The Lessee must ensure that all areas from which vegetation may have been removed by the Lessee prior to the execution of this lease or is removed in the future shall be promptly rehabilitated and re-vegetated with local or native species in order to minimise soil erosion and run-off.

#### 8.1.5 Water Use Conservation

The Lessee must conduct all reticulation and irrigation activities on the Leased Premises in accordance with best practice water conservation principles.

## 8.2 Licenses and Limitations

- (a) The Lessee accepts the Leased Premises for the Term with full knowledge of and subject to any existing prohibition, condition or restriction on the use of the Leased Premises.
- (b) If the carrying on of the Authorised Use at the Leased Premises is permissible only with the consent, licence or authority under any Law, the Lessee shall obtain and maintain the currency of that consent, licence or authority and comply with that Law.
- (c) The Lessee shall not conduct any business in or from the Leased Premises which is prohibited by any Law.
- (d) The Lessee shall not contravene the provisions of the *Associations Incorporation Act 1987 (WA)*.
- (e) The Lessee agrees to comply with the Lessor's Public *Event Guidelines*, the Department of Health's *Guidelines for Concerts, Events & Organised Gatherings* (December 2009) when conducting events.

## 8.3 Comply with Directions

The Lessee:

- (a) shall comply with the Lessor's reasonable requirements for the use of each Facility, Service, item of Plant and Equipment, the Lessee's Building and Fixtures and Lessor's Chattels;
- (b) shall not do or omit to do anything which might interfere with or impair the efficient supply or operation of each Facility, Service, item of Plant and Equipment, the Lessee's Building and Fixtures or Lessor's Chattel;
- (c) in the conduct of the Authorised Use comply strictly with all relevant requirements imposed by any Law or Relevant Authority; and
- (d) shall comply with all rules, regulations, directions and orders made in respect of the Leased Premises by the Lessor.

## **9. Security of Leased Premises**

- 9.1 The Lessee shall securely lock all doors, gates or other openings in, to or on the Leased Premises when the Leased Premises are unoccupied.
- 9.2 The Lessor may enter the Leased Premises at any time for any purpose in relation to security, but nothing in this clause makes the Lessor responsible in any way for the security of the Leased Premises.

## **10. Maintenance and Works**

### 10.1 Obligation to Maintain

The Lessee shall:

- (a) maintain the Leased Premises in a good condition and state of repair, except in respect of:

- (i) fair wear and tear; and
  - (ii) damage which is or will be reinstated from the proceeds of insurance;
- (b) promptly repair any damage to the Leased Premises for which the Lessee is responsible to the satisfaction of the Lessor;
- (c) keep the Leased Premises clean and free from rubbish;
- (d) maintain the Lessor's Chattels, the Lessor's Fixtures, the Lessee's Building and Fixtures and the Facilities in good condition and where necessary, replace that Lessor's Chattel, Lessor's Fixture, Lessee's Building and Fixtures or Facility to the satisfaction of the Lessor except in respect of:
- (i) fair wear and tear; and
  - (ii) damage which is or will be reinstated from the proceeds of an insurance policy;
- (e) not do or omit to do anything which might cause the Leased Premises, the Lessor's Chattels, the Lessee's Building and Fixtures and the Facilities to deteriorate or become impaired except for fair wear and tear, to be obstructed, or to be in a condition other than a good and sanitary condition;
- (f) maintain the Lessor's Chattels, the Lessee's Building and Fixtures and the Facilities in clean and good condition;
- (g) promptly replace any broken glass in the Leased Premises, the the Lessee's Building and Fixtures;
- (h) not without the Lessor's prior consent, install any electrical equipment on the Leased Premises which might overload the cables, switchboards or sub-boards through which electricity is connected to the Leased Premises or any fixtures (including any Building);
- (i) keep all drains and other pipes in or connected to the Leased Premises or any fixtures (including any Building) properly cleaned and free-flowing;
- (j) maintain the garden, lawns, edges, hedges, shrubs and trees, to water and fertilise them regularly and adequately, to keep the flower beds and lawns free of weeds, and to not remove or cut down any plants, trees or shrubs;
- (k) maintain all paved areas and keep them clean and tidy; and
- (l) maintain all roads, driveways and access ways on the Leased Premises and keep them free of rubbish and debris and ensure that they are not obstructed.

## 10.2 Alteration and Substantial Works

The Lessee must not make any alteration to or addition to or demolish any part of the Leased Premises, the Lessor's Fixtures or the Lessee's Building

and Fixtures, or remove or alter any of the Lessee's Building and Fixtures, the Lessor's Fixtures, the Lessor's Chattels, the Plant and Equipment or any Facility or Service in or on the Leased Premises without the prior written consent of the Lessor which consent may be granted or refused or granted subject to conditions at the absolute discretion of the Lessor EXCEPT THAT the Lessor shall not arbitrarily or unreasonably withhold its approval in the case of any mandatory alterations required by a Relevant Authority.

#### 10.3 Standard for Maintenance and Works

The Lessee must comply with the Works Conditions in carrying out all Maintenance and any other work which affects the Leased Premises, the Lessee's Building and Fixtures.

#### 10.4 Remove Non-approved Works

If the Lessee carries out any works, or erects any building or structure, on the Leased Premises which have not been previously approved in writing by the Lessor or which are not undertaken in accordance with the provisions of this Lease, the Lessor may require the Lessee (but without limiting any other right or remedy available to the Lessor) at the Lessee's cost, to dismantle and remove any such works, building or structures and the Lessee shall carry out the same in accordance with the Lessor's directions.

#### 10.5 Structural Maintenance

- (a) The Lessee is responsible for all structural repairs and maintenance of the Lessee's Building and Fixtures in accordance with this Lease; and
- (b) The Lessor is responsible for all structural repairs and maintenance of the Lessor's Fixtures.

### **11. Positive covenants**

#### 11.1 Costs and Expenses

The Lessee must pay to the Lessor or as the Lessor directs all the Lessor's costs, charges and expenses in connection with:

- (a) the negotiation, preparation, execution, stamping and registration of this Lease;
- (b) any consent, approval or exercise of any right, waiver, variation, release, surrender or discharge in connection with this Lease, including but not limited to all costs and expenses of and incidental to the preparation and service of a notice under section 81 of the *Property Law Act 1969 (WA)*;
- (c) any inspection or report concerning the Leased Premises and the Lessee's Building and Fixtures;
- (d) any breach of the Lessee's Obligations;
- (e) any work done at the request of the Lessee;
- (vi) the exercise or attempted exercise of the Lessor's Rights; and
- (vii) any action, suit or proceeding to which the Lessor is joined as a party as a result of the Lessee's occupation of the Leased Premises



and the Lessee's Building and Fixtures, and

such costs, charges and expenses include, but are not limited to:

- (h) taxes and fees and fines and penalties which may be payable in connection with this Lease;
- (i) all legal costs and expenses on a full indemnity basis; and
- (j) all interest which the Lessor is entitled to claim.

#### 11.2 Reimburse Lessor Expenses

The Lessee shall pay to the Lessor on demand all money paid by the Lessor on behalf of the Lessee in the discharge of any of the Lessee's Obligations.

#### 11.3 Report to Lessor

The Lessee shall report promptly to the Lessor or the Managing Agent in writing:

- (a) all structural damage or defects in the Leased Premises, the Lessee's Building and Fixtures, the Lessor's Fixtures of which the Lessee is or ought to be aware;
- (b) any notice or order received from any court relating to the Leased Premises, the Lessor's Fixtures and the Lessee's Building and Fixtures; and
- (c) any circumstances likely to be a danger or cause any damage or danger to the Leased Premises, the Lessor's Fixtures and the Lessee's Building and Fixtures or any person in or on the Leased Premises, the Lessor's Fixtures and the Lessee's Building and Fixtures of which the Lessee is aware.

#### 11.4 Comply with Laws

The Lessee shall comply promptly with all other Laws affecting the Leased Premises, the Lessee's Building and Fixtures or the use of the Leased Premises and the Lessee's Building and Fixtures including any structural work in respect of the Lessee's Works, including the *Health Act 1922 (WA)*, the *Health (Public Buildings) Regulations 1992*, the *Environmental Protection Act 1986 (WA)* and the *Environmental Protection (Noise) Regulations 1997*.

#### 11.5 Interest

The Lessee shall on demand by the Lessor, pay the Lessor interest on any Rent, or other money payable under this Lease which is not paid on the due date calculated at the Rate specified in item 5 of Schedule 1 from the due date for payment until the date of actual payment.

### **12. Negative covenants**

The Lessee shall not:

- (a) except for reasonable quantities for normal applications in connection with the use of the Leased Premises and in the carrying out of the Authorised

Use, bring onto, store or use any chemical or inflammable substance on or in the Leased Premises;

- (b) store goods on or in the Leased Premises other than those necessary in the carrying out of the Authorised Use;
- (c) except as is lawful and necessary and an ordinary incident of carrying out the Authorised Use, do or carry on or in the Leased Premises any activity which might be harmful, offensive or illegal, or cause a nuisance, damage or disturbance to the Lessor or the owners or occupiers of any nearby properties unless with the prior consent of any Relevant Authority and the Lessor;
- (d) place any rubbish on or in any part of the Leased Premises except in a suitable receptacle;
- (e) burn any rubbish in or on the Leased Premises, unless permitted by law and a necessary and ordinary incident of the Authorised Use; and
- (f) deliver or permit to be delivered goods or materials to or from the Leased Premises except in a manner which causes minimum interference to the Lessor or the owners or occupiers of any nearby properties.

### **13. Lessee's Obligation to effect insurances**

13.1 The Lessee shall effect and maintain in the names of the Lessor and the Lessee with an insurance company approved by the Lessor all policies of insurance relating to the Leased Premises, and the Lessee's Building and Fixtures or otherwise as reasonably required by the Lessor from time to time, including policies of insurance in respect of the matters referred to in item 10 of Schedule 1 and the Lessee shall:

- (a) supply to the Lessor current details of all insurance effected in accordance with this clause, including copies of certificates of insurance or policy documents and receipts for premiums as updated, amended or varied from time to time;
- (b) not without the Lessor's prior consent, alter the terms or conditions of any policy; and
- (c) ensure that each policy of insurance includes a provision for cross liability and waiver of subrogation rights in favour of the Lessor.

13.2 The Lessee must not by any act or omission cause or allow anything to be done which might result in any insurance policy effected under this Lease or in respect of the Leased Premises and the Lessee's Building and Fixtures becoming void or voidable or which might increase the premium on any policy.

### **14. Indemnities**

#### **14.1 General indemnity**

Except to the extent contributed to by the Lessor and the Minister for Lands, the Lessee shall indemnify and keep indemnified the Lessor and the Minister for Lands against all losses, claims, damages, demands, costs and expenses for which the Lessor or the Minister for Lands becomes liable in respect of loss or damage to property or death or injury of any nature

and however or wherever sustained:

- (a) which are caused or contributed to by the use or occupancy of the Leased Premises and the Lessee's Building and Fixtures by the Lessee, an Authorised Person or any other person, except to the extent caused or contributed to by the Lessor;
- (b) resulting from an act or omission of the Lessee; or
- (c) resulting from a notice, claim or demand against the Lessee to do or refrain from doing anything except to the extent that the Lessor or the Minister for Lands is obliged by this Lease to pay for or contribute to the cost of compliance with the notice, claim or demand and fails to do so.

#### 14.2 Nature of indemnity

The obligation of the Lessee to indemnify the Lessor under this Lease and the Minister for Lands or at law is not affected by the obligation of the Lessee to effect insurance and all indemnities shall survive the termination of the Lease.

### **15. Assignment**

#### 15.1 No assignment

Section 18 of the LAA applies to this Lease and further the Lessee must not assign, mortgage or charge the Lessee's leasehold estate in the Leased Premises, nor sublet, part with possession or dispose of the Leased Premises in any way except where provided in the following provisions of clause 15.

#### 15.2 Property Law Act excluded

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

#### 15.3 Lessor may consent to assignment

The Lessee will not be in breach of the covenant in clause 15.1 in respect of an assignment if the Lessor consents to the assignment. The Lessor will not unreasonably withhold consent if the following criteria are satisfied:

- (a) the Lessee satisfies the Lessor that:
  - (i) the proposed assignee is a respectable and responsible person of good financial standing, with sound business acumen, with adequate business experience and who is capable of meeting all the financial commitments of the Lessee under this Lease;
  - (ii) there is no Rent or other money payable under this Lease due but unpaid; and
  - (iii) there is no unremedied breach of the Lessee's Obligations and there have been no substantial breaches of the Lessee's Obligations during the Term;
- (b) the Lessee procures the execution by the proposed assignee of an assignment of lease prepared by the Lessor's solicitors at the

Lessee's cost which contains terms acceptable to the Lessor, including:

- (i) a covenant by the proposed assignee with the Lessor to pay all Rent and other money payable under this Lease; and
  - (ii) a covenant by the proposed assignee to observe and perform all of the Lessee's Obligations;
- (c) if the proposed assignee is a company, the directors or substantial shareholders of the company at the option of the Lessor guarantee to the Lessor the observance and performance of all of the Lessee's Obligations including payment of the Rent and other money payable under this Lease;
- (d) the Lessee agrees that the covenants of the assignee are independent of the covenants of the Lessee in this Lease and will not release or relieve the Lessee from the Lessee's Obligations and the Lessee acknowledges that the Lessee will continue to be fully responsible for the Lessee's Obligations notwithstanding the assignment of the Lease to the proposed assignee, particularly on the occurrence of an Event of Default by the proposed assignee or any other party;
- (e) the assignment complies with Council Policy CP/PMG-3780 Leasing of Council Managed Reserve Land - Community; and
- (f) the Minister consents in writing to the proposed assignment of the Lease pursuant to section 18 of the LAA.

#### 15.4 Lessor may consent to sublease

The Lessee will not be in breach of the covenant in clause 15.1 in respect of a sublease of the whole or part of the Leased Premises and the Lessee's Building and Fixtures if the Lessor consents to the sublease. The Lessor will not unreasonably withhold consent if the following criteria are satisfied:

- (a) the Lessee satisfies the Lessor that:
  - (i) the proposed sub lessee is a respectable and responsible person of a good financial standing, with sound business acumen, with adequate business experience and who is capable of meeting all the financial commitments of the sub lessee under a sublease of this Lease;
  - (ii) the sublease will be granted without any fine or premium, and at a rent per square metre of the subleased area at least equal to the Rent payable under this Lease;
  - (iii) there is no Rent or other money payable under this Lease due but unpaid; and
  - (iv) there is no unremedied breach of the Lessee's Obligations and there have been no substantial breaches of the Lessee's Obligations during the Term;
- (b) the Lessee procures the execution by the proposed sub lessee of a sublease approved by the Lessor or the Lessor's solicitors at the Lessee's cost which contains terms consistent in all respects with

this Lease and acceptable to the Lessor;

- (c) if the proposed sub lessee is a company, the directors or substantial shareholders of the company at the option of the Lessor guarantee to the Lessor the observance and performance by the proposed sub lessee of all of the Lessee's Obligations as if the proposed sub lessee were named in this Lease as the Lessee;
- (d) the Lessee agrees that the covenants of the sub lessee are independent of the covenants of the Lessee in this Lease and will not release or relieve the Lessee from the Lessee's Obligations and the Lessee acknowledges that the Lessee will continue to be fully responsible for the Lessee's Obligations notwithstanding the sublease of the Lease to the proposed sub lessee, particularly on the occurrence of an Event of Default by the proposed sub lessee or any other party;
- (e) if the sublease complies with Council Policy CP/PMG-3780 - Leasing of Council Managed Reserve Land - Community; and
- (f) the Minister consents to the proposed sublease of the Leased Premises in accordance with section 18 of the LAA.

#### 15.5 Lessor may consent to charge

- (a) The Lessee will not be in breach of the covenant in clause 15.1 in respect of a charge or mortgage if the Lessee obtains the Lessor's, and the Minister for Lands consent to that charge or mortgage.
- (b) The Lessor may consent to, or refuse to give its consent to, a charge or mortgage in its absolute discretion.
- (c) The Minister for Lands may consent to, or refuse to give consent to, a charge of mortgage with absolute discretion.

#### 15.6 Compliance with Acts

The Lessor and the Lessee acknowledge that if in granting its consent to any assignment or sublease the Lessor has to first comply with or satisfy any obligations or requirements under any Written Law, including but not limited to section 3.58 of the *Local Government Act 1995* (WA) and regulation 30(2)(b) of the *Local Government (Functions and General) Regulations 1996* ("Assignment/Sublease Condition Precedent"), then the Lessor's consent is made expressly conditional upon and subject to satisfaction of the Assignment/Sublease Condition Precedent.

#### 15.7 Requirements before approval

The Lessee agrees that the Lessor and the Minister may, before giving approval under section 18 of the LAA in writing, require such information concerning the transaction for which approval is sought as the Lessor and the Minister specify.

### **16. Damage, Destruction or Resumption**

#### 16.1 Definitions

In this clause 16:

- (a) “Reinstatement Notice” means a notice given by the Lessor to the Lessee of the Lessor’s intention to carry out the Reinstatement Works; and
- (b) “Reinstatement Works” means the work necessary to:
  - (i) reinstate the Leased Premises; or
  - (ii) make the Leased Premises fit for occupation and use or accessible by the Lessee.

16.2 Abatement

- (a) If the Leased Premises are damaged or destroyed so as to render any part of the Leased Premises wholly or substantially:
  - (i) unfit for occupation and use by the Lessee; or
  - (ii) inaccessible having regard to the nature and location of the Leased Premises and the normal means of access to them,

THEN from the date that the Lessee notifies the Lessor of the damage or destruction (“Damage Notice”):

- (iii) the Rent;
- (iv) any other money payable by the Lessee under this Lease; and
- (v) the covenant to repair and maintain,

will subject to clauses 16.2(b) and 16.2(c), according to the nature and extent of the damage or destruction sustained, and the extent to which such destruction interferes with the continued operation of the Lessee’s Business, abate in whole or in part as agreed by the Lessor and the Lessee or in the absence of agreement as determined pursuant to clause 16.2(c).

- (b) If clause 16.2(a) applies, then subject to clause 16.2(c) the remedies for:

- (i) recovery of the Rent and any other money or a proportionate part falling due after the damage or destruction; or
- (ii) enforcement of the covenant to repair and maintain,

will be suspended (or partially suspended as the circumstances require) from the date of the Damage Notice until the Premises are:

- (iii) restored;
- (iv) made fit for the Lessee’s occupation and use; and
- (v) made accessible.

- (c) If the parties cannot agree on the proportion of the abatement pursuant to clause 16.2(a) or the date upon which the abatement should cease pursuant to clause 16.2(b):

- (i) that proportion of the abatement and / or the date upon which the abatement should cease shall be determined by a Valuer appointed by the president of the Australian Property Institute (WA Division);
- (ii) the costs of a Valuer appointed under clause 16.2(c)(i) shall be borne equally by the Lessor and the Lessee; and
- (iii) until any dispute over the proportion of the abatement or the date upon which the abatement should cease has been determined the Lessee will continue to pay all money due pursuant to the Lease less any abatement that the Lessor accepts should be applied.

#### 16.3 Either Party May Terminate

If clause 16.2(a) applies, either party may terminate this Lease by notice to the other unless the Lessor:

- (a) within ninety (90) calendar days of receiving the Damage Notice, gives the Lessee a Reinstatement Notice; and
- (b) diligently proceeds within a reasonable time to carry out the Reinstatement Works.

#### 16.4 Lessee May Terminate

If the Lessor gives a Reinstatement Notice to the Lessee and fails to commence the Reinstatement Works within a reasonable time, the Lessee may terminate this Lease by giving not less than thirty (30) days' notice to the Lessor and, at the expiration of that period, this Lease will terminate.

#### 16.5 Exceptions

Clauses 16.2, 16.3 and 16.4 will not apply where:

- (a) the damage or destruction was contributed to, or also caused by or arises from any wilful act of the Lessee or an Authorised Person; or
- (b) an insurer under any policy effected under this Lease refuses indemnity or reduces the sum payable under the policy because of any act or default of the Lessee or an Authorised Person.

#### 16.6 Lessor may Terminate

If the Lessor considers the damage to the Premises renders it impractical or undesirable to carry out the Reinstatement Works, the Lessor may terminate this Lease by giving not less than thirty (30) days' notice to the Lessee and, at the expiration of that notice, this Lease will terminate.

#### 16.7 Antecedent Breaches

No liability will attach to either party because of termination of this Lease under this clause 16 but that termination will be without prejudice to the rights of either party for any antecedent breach or non-observance of any provision of this Lease.

## 16.8 Dispute Resolution

- (a) Each Valuer appointed under clause 16.2 shall:
  - (i) act as an expert and not as an arbitrator; and
  - (ii) provide his or her determination and the reasons for his or her determination of the extent of an abatement and the period of abatement, in writing within ten (10) Business Days of his or her appointment.
- (b) Upon determination of the extent of an abatement and the period of abatement being finally determined then on the date upon which the immediately subsequent instalment of Rent is due and payable under this Lease:
  - (i) the Lessee shall pay the Lessor; or
  - (ii) the Lessor shall refund to the Lessee, as the case requires, the difference between what the Lessee has actually paid pursuant to the Lease from the date of service of the Damage Notice and what the Lessee is determined to have actually been liable to pay after the abatement.

## 16.9 Lessor Not Obligated to Reinstate

Nothing in this Lease obliges the Lessor to reinstate the Leased Premises or the means of access to them.

## 16.10 Proceeds of Insurance

If the Leased Premises are damaged or destroyed and the Lease is terminated under this clause 16, the Lessee will have no interest in the insurance proceeds other than those proceeds that relate to the Lessee's Building and Fixtures and contents.

## 16.11 Resumption of Leased Premises

If the Leased Premises or any part of the Leased Premises is resumed by any authority so as to render the Leased Premises inaccessible or substantially unfit for the occupation of the Lessee, this Lease may be terminated without compensation or other liability by either the Lessor or the Lessee by thirty (30) calendar days' notice to the other but without affecting the rights of either party against the other in respect of any previous breaches of the provisions of this Lease.

## **17. Limit of Lessor's liability**

### 17.1 No warranties or representations

The Lessee acknowledges and agrees that:

- (a) all the Lessee's Building and Fixtures and other Lessee's property in or on the Leased Premises shall be at the sole risk of the Lessee during the Term and the Lessor shall not be liable for any claim, loss or damage that the Lessee may suffer as a result of:
  - (i) any fault in the construction or state of repair of the Leased Premises, the Lessee's Building and Fixtures or the



Lessor's Fixtures;

- (ii) any defect in any of the Plant and Equipment, Facilities or the Services;
  - (iii) any flow, overflow, leakage or breakdown of any water, air conditioning, gas, power or other source of energy whether from the Leased Premises or otherwise;
- (b) the Lessor gives no warranty as to the use to which the Leased Premises may be put; and
- (c) the Lessee has not relied on any representation or warranty of the Lessor in entering into this Lease and, for this purpose, the Lessee acknowledges that:
- (i) the Lessee has relied on the Lessee's own skill and judgment and has made the Lessee's own enquiries in determining the suitability of the Leased Premises for the Authorised Use; and
  - (ii) the Lessee's occupation of the Leased Premises is conclusive evidence of the Lessee's acceptance of the Leased Premises as being in good order, repair and condition at the Commencement Date.

#### 17.2 Lessor Not Liable

The Lessor is not liable to the Lessee and the Lessee will not make a claim against the Lessor in respect of any liability resulting from any accident, death, injury, damage to any property (including water damage), equipment, or machinery malfunction, interruption of Services or other event of a similar nature in or affecting the Leased Premises.

#### 17.3 Lessor only liable while Primary Interest Holder

Each Lessor is only liable for any breaches under this Lease occurring while registered as the Primary Interest Holder of the Leased Premises.

#### 17.4 Lessee acts at own risk

Unless this Lease provides otherwise, whenever the Lessee is obligated or required by this Lease to do or omit to do any act or thing, the doing or the omission of the act or thing will be at the sole risk and expense of the Lessee.

### **18. Default**

An Event of Default occurs if:

- (a) the Lessee fails to pay the Rent, the outgoings or other money payable under this Lease for seven (7) Business Days after the Lessor has given written notice to the Lessee of the default;
- (b) the Lessee fails to perform any of the Lessee's Obligations other than the payment of moneys referred to in clause 18(a) for seven (7) Business Days after the Lessor has given written notice to the Lessee of the default;
- (c) distress is levied or a judgement, order, security or encumbrance is enforced against any property of the Lessee;

- (d) a receiver, manager or controller as defined in the *Corporations Act 2001* (Cth) is appointed in respect of any part of the Lessee's property;
- (e) a person is appointed under legislation to investigate or manage any part of the Lessee's affairs;
- (f) the Lessee ceases to carry on the Authorised Use from the Leased Premises;
- (g) where the Lessee is an incorporated association and:
  - (i) an application is made to a court for an order or an order is made that the Lessee be wound up;
  - (ii) an application is made to a court for an order appointing a liquidator or provisional liquidator in respect of the Lessee;
  - (iii) except for the purposes of reconstruction or amalgamation, the Lessee enters into a scheme of arrangement, deed of company arrangement or composition with, or assignment for the benefit of, all or any class of the Lessee's creditors;
  - (iv) the Lessee resolves to wind itself up or otherwise dissolve itself;
  - (v) the Lessee states that it is insolvent; or
  - (vi) the Lessee takes any step to obtain protection or is granted protection from its creditors under any applicable legislation.

## **19. Lessor's powers on default**

### 19.1 Lessor's right of possession

On the occurrence of an Event of Default, the Lessor may without giving any further notice or demand enter the Leased Premises and re-take possession, and on re-entry, the Term will immediately expire.

### 19.2 Lessor may remedy Lessee's default

- (a) If an Event of Default occurs or the Lessee otherwise fails to perform any of the Lessee's Obligations, the Lessor may without prejudice to the Lessor's rights arising from the Event of Default or the failure to perform, remedy that Event of Default or the failure to perform as if the Lessor was the Lessee, at the Lessee's cost. The Lessee must pay to the Lessor all liabilities incurred by the Lessor in remedying an Event of Default or failure to perform.
- (b) None of the following events constitutes a re-entry or forfeiture or waiver of the Lessor's rights to recover in full all Rent, outgoings and other money payable by the Lessee under the Lease:
  - (i) acceptance of the keys or other access devices for the Leased Premises;
  - (ii) entry to the Leased Premises by the Lessor for the purpose of inspection or for the purpose of showing the Leased Premises to prospective Lessees or to remedy an Event of Default; or

- (iii) advertising the Leased Premises for re-letting.

#### 19.3 No prejudice of Lessor's rights

Any re-possession or attempted re-possession of the Leased Premises by the Lessor or any demand for or acceptance of any of the Rent, outgoings or other money payable under this Lease will not:

- (a) prejudice or affect the Lessor's rights under this Lease;
- (b) release the Lessee from performing the Lessee's Obligations; or
- (c) be deemed an election by the Lessor as to the exercise of the Lessor's rights under this Lease or at law.

#### 19.4 Exercise of rights by Lessor

The Lessor may exercise the Lessor's rights under this Lease or at law notwithstanding any delay of the Lessor in issuing proceedings or neglect or waiver in respect of any breach of the Lessee's Obligations, and without giving notice except in accordance with this Lease or as required by law, and without having to prove default by the Lessee or the continuance of that default.

### **20. Essential terms**

#### 20.1 Breach of Essential Terms

- (a) If the Lessee's conduct constitutes a breach of an essential term of this Lease and the Lessor elects to treat that breach as repudiation or the conduct otherwise constitutes repudiation of this Lease, the Lessee shall compensate the Lessor for all loss or damage suffered by reason of or arising from the repudiation.
- (b) Clauses 4 ("Rent"), 5 ("Rent Review"), 6 ("Rates and Taxes"), 8 ("Use of Leased Premises and Facilities"), 10 ("Maintenance and Works"), 13 ("Lessee's Obligations to effect insurances"), 15 ("Assignment") and 27 ("Environmental Matters") of this Lease are deemed to be essential terms. This is not an exhaustive list of the essential terms of this Lease.

#### 20.2 Damage for Breach of Essential Terms

Any loss or damage for the unexpired residue of the Term suffered by the Lessor as a result of the Lessee's breach of an essential term may be recovered as damages at any time.

#### 20.3 Lessor's Entitlement to Damages

The Lessor's entitlement to recover damages from the Lessee or any other person will not be limited or affected by any of the following:

- (a) if the Lessee abandons or vacates the Leased Premises;
- (b) if the Lessor elects to re-enter the Leased Premises or terminate this Lease;

- (c) if the Lessor accepts the Lessee's repudiation; or
- (d) if the parties' conduct (or that of any of their servants or agents) constitutes or may constitute a surrender by operation of law.

#### 20.4 Lessor to Mitigate Damages

- (a) If the Lessee vacates the Leased Premises or if the Lessor accepts the Lessee's repudiation based on the Lessee's breach of an essential term of this Lease and terminates this Lease, the Lessor must take reasonable steps to mitigate its loss and endeavour to re-lease the Leased Premises on reasonable terms.
- (b) The entitlement to damages will be assessed on the basis that the Lessor has observed the obligation to mitigate damages.
- (c) The Lessor's conduct in mitigating its damages will not of itself constitute acceptance of the breach or repudiation or a surrender by operation of law.

#### 20.5 Calculation of Damages

Following repudiation by the Lessee if the Lessor terminates this Lease then, without prejudice to any other right or remedy, the Lessor may recover the difference between the aggregate of the Rent, the reasonable estimate of the outgoings and other money payable by the Lessee for the unexpired residue of the Term less any amount the Lessor obtains, or could in the Lessor's opinion reasonably be expected to obtain, by observing clause 20.

### **21. Termination**

#### 21.1 Yield up Leased Premises

The Lessee shall on Termination surrender and yield up the Leased Premises to the Lessor in a condition consistent with the compliance of the Lessee's Obligations during the Term and deliver to the Lessor all keys, access cards and other security devices for the Leased Premises.

#### 21.2 Remove Lessee's Buildings and Fixtures

- (a) At the Termination of the Lease the Lessor is not required to compensate for, or purchase all or any, of the Lessee's Building and Fixtures.
- (b) The Lessor may by notice to the Lessee at any time up to the day that is ten (10) Business Days after the Termination of this Lease provide an offer to purchase the Lessee's Building and Fixtures.
- (c) If the Lessor does not purchase the Lessee's Building and Fixtures the Lessee shall unless the Lessor agrees to the contrary:
  - (i) prior to Termination or on the termination of any period of holding over, remove from the Leased Premises all of the Lessee's Building and Fixtures and other property and any Lessor's Fixtures which the Lessor requires to be removed, and make good any damage caused to the Leased Premises by the removal of the Lessee's property;

- (ii) comply with the Works Conditions in respect of the removal of those items specified in clause 21.2(a); and
- (iii) submit details of the proposed removal works for the Lessor's approval not less than two (2) months prior to Termination, or in the event of the sooner determination of this Lease, on or prior to that sooner determination.

### 21.3 Making Good of Leased Premises on Termination

Subject to clause 21.2, the Lessee shall, unless the Lessor agrees to the contrary, prior to Termination or on the termination of any period of holding over, make good the Leased Premises, the Facilities on the Leased Premises and those parts of the Plant and Equipment affected by the Lessee's occupation of the Leased Premises.

### 21.4 Lessor Can Make Good

If the Lessee does not comply with the obligation to make good as set out in clause 21.3, the Lessee shall pay the Lessor within twenty eight (28) days after the Lessor requests payment, any costs reasonably incurred by the Lessor to make good the Leased Premises, the Facilities on the Leased Premises and those parts of the Plant and Equipment affected by the Lessee's occupation of the Leased Premises. The obligation to pay those costs does not limit any other rights of the Lessor in relation to the Lessee's default.

### 21.5 Dealing with Lessee's property not removed at Termination

The Lessor has the following rights in respect of the Lessee's property, including Lessee's Building and Fixtures, which are not removed at Termination:

- (a) demolish and dispose of the Lessee's property or remove and store the Lessee's property in an alternative Leased Premises at the Lessee's cost;
- (b) to sell or dispose of the Lessee's property and apply the proceeds of sale towards payment of any unpaid Rent or other money payable under this Lease; or
- (c) to elect that the Lessee's property is the absolute property of the Lessor and to deal with the Lessee's property as the Lessor sees fit;

and the Lessee shall indemnify the Lessor in respect of any loss or damage suffered by the Lessor as a result of:

- (d) the Lessee failing to remove all of the Lessee's property by Termination; or
- (e) any claim against the Lessor by any person by reason of the exercise by the Lessor of its rights under this clause 21.5.

### 21.6 Lessee to continue to pay Rent and outgoings

If the Lessee fails to make good the Leased Premises as specified in clause 21.3, or fails to remove the Lessee's property by Termination, then until the

Leased Premises are restored in accordance with this Lease or the Lessor elects to take the absolute property in the Lessee's property left after Termination, the Lessee shall continue to pay the Rent and the outgoings and other money payable as if the Lessee were holding over in the Leased Premises.

## **22. Option of renewal**

If:

- (a) not more than six (6) months nor less than three (3) months prior to the expiration of the Term, the Lessee serves a notice in writing on the Lessor of the Lessee's desire to renew the Term;
- (b) at the date of service of the notice, the Lessee is not in arrears of any Amounts Payable and there is no outstanding breach or non-observance of the Lessee's Obligations; and
- (c) the Minister consents in accordance with section 18(1) of the LAA,

the Lessor will, at the cost of the Lessee, grant to the Lessee a further lease of the Leased Premises for the Further Term specified in item 9 of Schedule 1 pursuant to this Lease and otherwise on the same terms and conditions of this Lease.

## **23. Holding Over**

If after the expiry of the Term the Lessee remains in possession of the Leased Premises with the consent of the Lessor, the Lessee shall be deemed to be a monthly tenant on such of the terms of this Lease as are capable of applying to a monthly tenancy. The Lessee's right to remain in possession of the Leased Premises shall be subject to the continued performance of the Lessee's Obligations.

- (a) Subject to clause 23(d), the Rent payable during any period of holding over shall be one hundred and ten percent (110%) of the annual Rent payable immediately prior to the expiry of the Term.
- (b) The Lessor may increase the Rent payable during any period of holding over upon giving the Lessee one (1) months' notice in writing.
- (c) The monthly tenancy may be terminated by either party giving the other party one (1) months' notice of termination which notice may be given at any time.

## **24. CEO and Lessor as Attorney**

The Lessee for valuable consideration:

- (a) irrevocably appoints the Lessor and the CEO of the Lessor jointly and severally the Lessee's attorney for the purpose of
  - (i) withdrawing any caveat which the Lessee is obliged to withdraw but does not; and
  - (ii) doing anything else the Lessee is obliged to do under this Lease but does not do when required;
- (b) undertakes to ratify all that the attorney does or causes to be done under this clause; and

- (c) indemnifies the Lessor in respect of:
  - (i) losses arising from any act done under this clause; and
  - (ii) the Lessor's costs and expenses of and incidental to the withdrawing of any caveat mentioned in this clause.

## **25. Trustee Provisions**

If the Lessee has entered into this Lease in the capacity of trustee, whether or not the Lessor has any notice of the trust, the Lessee:

- (a) is taken to enter into this Lease both as trustee and in the Lessee's personal capacity and acknowledges that the Lessee is personally liable for the performance of the Lessee's Obligations under this Lease;
- (b) will take any action necessary to ensure the assets of the trust are available to satisfy any claim by the Lessor for any default by the Lessee;
- (c) will assign to the Lessor any right of indemnity the Lessee has against the assets of the trust to the extent of the liability of the Lessee under this Lease; and
- (d) warrants that the Lessee has the power and authority under the terms of the trust to enter into this Lease.

## **26. Special clauses**

- 26.1 The special clauses (if any) set out in Schedule 2 shall be deemed to be incorporated into and form part of this Lease as if fully set out in the body of this Lease.
- 26.2 If there is any inconsistency between the provisions of this Lease generally and the special clauses, the special clauses shall prevail to the extent of the inconsistency.

## **27. Environmental Matters**

### 27.1 Lessee's Environmental Covenants

The Lessee must:

- (a) comply with all Environmental Laws including, without limitation, obtaining all necessary permits, authorisations and approvals required for the Lessee to carry out the Authorised Use on the Leased Premises;
- (b) take all practicable precautions to ensure that no Contamination of the Leased Premises or the Environment in the vicinity of the Leased Premises occurs;
- (c) not discharge into any stormwater drain any trade effluent, Hazardous Material or Waste, other than that which is authorised by the relevant Government Authority;
- (d) immediately notify the Lessor if:

- (i) a Contamination Event occurs on the Leased Premises; or
  - (ii) an Environmental Notice is served on the Lessee;
- (e) if a Contamination Event occurs and irrespective of whether an Environmental Notice has been served on the Lessee, promptly take all usual and reasonable actions at the Lessee's own cost and in accordance with best industry practice for the Remediation of the Leased Premises and any land in the vicinity of the Leased Premises to a condition, as far as practicable, as if the Contamination Event had not occurred;
- (f) at the Lessee's own cost, comply with every Environmental Notice issued in respect of, or arising from, the Lessee's occupation or use of the Leased Premises, whether the notice is served on the Lessor or the Lessee;
- (g) allow the Lessor and its employees and contractors:
- (i) after receiving reasonable notice from the Lessor, access to the Leased Premises to conduct environmental audits or inspections from time to time; and
  - (ii) immediate access to the Leased Premises to conduct an inspection following a Contamination Event; and
- (h) pay the reasonable costs of any reputable environmental consultant appointed by the Lessor to undertake an inspection from time to time of the Leased Premises to verify the Lessee's compliance with this clause 27.

## 27.2 Remediate Contamination

- (a) Without limiting the Lessee's obligation under clause 27.1(e), the Lessee must ensure that at the expiration of the Term it has Remediated any Contamination of the Leased Premises or any land in the vicinity of the Leased Premises caused by the Lessee, to the absolute satisfaction of the Lessor.
- (b) Subject to clause 27.2(e), not later than six (6) months before the expiration of the Term, the Lessee must arrange for a reputable environment consultant approved by the Lessor (whose approval must not be unreasonably withheld) to:
- (i) carry out an investigation of Contamination at the Leased Premises;
  - (ii) prepare a report with respect to any (if any) Contamination at the Leased Premises; and
  - (iii) prepare a Remediation Notice (if applicable).
- (c) Subject to clause 27.2(d), the Lessee must promptly carry out all the works specified in the Remediation Notice to the satisfaction of the Lessor, and at the Lessee's sole cost.
- (d) The Lessee is under no obligation to carry out remedial works in respect of Contamination of the Leased Premises shown to exist at the Commencement Date, except to the extent that the Lessee



has disturbed the Contamination in a manner which creates a risk of harm to people or the Environment.

- (e) If this Lease is terminated by the Lessor prior to the expiration of the Term, the Lessor may:
  - (i) arrange for the investigation of Contamination referred to in clause 27.2(a) and for the preparation of a Remediation Notice (if applicable); and
  - (ii) carry out the works specified in the Remediation Notice, at the Lessee's expense, and the Lessee will indemnify the Lessor under clause 27.3(a).
- (f) For the avoidance of doubt, this clause 27.2 is for the benefit of the Lessor and can only be waived by the Lessor.

#### 27.3 Environmental Indemnity

- (a) Without limiting clause 14 of the Lease the Lessee indemnifies the Lessor and the Lessor's employees in respect of all claims, judgments, orders, costs (including legal costs on a full indemnity basis) and expenses for which the Lessor is or may become liable in respect of or arising from the Lessee's breach of any of the Lessee's Environmental Covenants.
- (b) Without limiting clause 27.3(a) above, in the event that the Lessee fails to promptly comply with its obligations under clauses 27.1(e), 27.1(f), 27.2(a), 27.2(b) or 27.2(c) the Lessor shall be at liberty to carry out all of the said obligations at the cost of the Lessee, which cost shall be recoverable from the Lessee on demand.

#### 27.4 Event of Default and Essential Term

For the avoidance of doubt, a failure by the Lessee to perform or comply with any of its obligations under this clause 27 is an Event of Default and a breach of an essential term of the Lease.

#### 27.5 Definitions

In this clause 27:

- (a) "Contamination" means the affectation of land (including any surface water, ground water or other waters and airspace) by any matter or substance, including but not limited to a solid, liquid, gas, odour, heat, sound, vibration or radiation which:
  - (i) makes or may make such land or the surrounding Environment:
    - (A) unsafe or unfit for habitation or occupation by persons or animals;
    - (B) environmentally degraded; or
    - (C) not comply with any Environmental Law; or
  - (ii) otherwise gives rise to a risk or possible risk of harm to

human health or the Environment;

- (b) “Contamination Event” means any incident originating on the Leased Premises involving:
- (i) any Contamination or likely Contamination of the Leased Premises, or the Environment in the vicinity of the Leased Premises; or
  - (ii) the unlawful disposal of Waste in a manner which harms or is likely to harm the Environment;
- (c) “Environment” means all components of the earth, including:
- (i) land, air and water;
  - (ii) any layer of the atmosphere;
  - (iii) any organic or inorganic matter and any living organism including humans;
  - (iv) human made or modified structures and areas;
  - (v) the aesthetic characteristics of the components of the earth, including appearance, sound, odour, taste and texture; and
  - (vi) ecosystems with any combinations of the above;
- (d) “Environmental Law” means any law, whether statute or common law (including the laws of negligence and nuisance), concerning the Environment and includes laws concerning:
- (i) the carrying out of uses, works or development or the subdivision of land;
  - (ii) emissions of substances into the atmosphere, waters and land;
  - (iii) pollution and contamination of the atmosphere, waters and land;
  - (iv) production, use, handling, storage, transportation and disposal of:
    - (A) Waste;
    - (B) Hazardous Materials; and
    - (C) dangerous goods;
  - (v) conservation, heritage and natural resources;
  - (vi) threatened and endangered and other flora and fauna species;
  - (vii) the erection and use of structures; and
  - (viii) the health and safety of people,

whether made or in force before or after the date of this Lease;

- (e) “Environmental Notice” means any direction, order demand or other requirement to take any action or refrain from taking any action in respect of the Leased Premises or its use from any Government Authority in connection with any Environmental Law;
- (g) “Government Authority” means any state, federal or local government department or authority, government Minister, governmental, semi-governmental, administrative or judicial person or any other person (whether autonomous or not) charged with the administration of any applicable Laws;
- (h) “Hazardous Material” means material which, because it is toxic, corrosive, flammable, explosive or infectious or possesses some other dangerous characteristics, is potentially dangerous to the Environment when stored or handled or when any part of the Environment is exposed to it;
- (h) “Lessee’s Environmental Covenants” means the Lessee’s obligations under clause 27.1, together and each of them separately;
- (i) “Remediation” includes the investigation, clean up, removal, abatement, disposal, control, containment, encapsulation or other treatment of Contamination and includes the monitoring and risk management of any Contamination;
- (j) “Remediation Notice” means a statement of the works necessary to remediate any Contamination at the Leased Premises or the surrounding Environment to an appropriate standard; and
- (k) “Waste” means any discarded, rejected, unwanted, surplus or abandoned substance whether or not:
  - (i) it is intentionally discarded;
  - (ii) it has a value or use; or
  - (iii) it is intended for sale, recycling, reprocessing, recovery or purification.

## **28. Caveats and registration of Lease**

### **28.1 Registration**

- (a) The Lessee may register this Lease but must not lodge an absolute caveat over the Leased Premises to protect the interest of the Lessee under this Deed and the Lessee must surrender any registered lease and withdraw any caveat lodged by or on behalf of the Lessee over the Leased Premises on Termination of the Lease.
- (b) In consideration of the Lessor leasing the Leased Premises to the Lessee, the Lessee irrevocably appoints the Lessor and every officer of the Lessor as defined by the *Corporations Act 2001* (Cth) to be attorney of the Lessee, in the name and on behalf of the Lessee, and as the act and deed of the Lessee to sign and lodge at Landgate, Perth, a surrender of lease and a withdrawal of any caveat lodged by or on behalf of the Lessee and not surrendered or withdrawn on Termination of the Lease, and the Lessee;

- (i) undertakes to ratify all that the attorney does or causes to be done under or by virtue of this subclause; and
- (ii) indemnifies the Lessor in respect of any loss arising from any act done under or by virtue of this subclause, and the Lessor's costs and expenses of and incidental to the surrendering of the Lease and withdrawing of any caveat lodged by or on behalf of the Lessee affecting the Leased Premises.

**28.2 Lessee must withdraw Caveat and any Registered Encumbrances**

- (a) The Lessee on or before the Termination of the Lease must:
  - (i) withdraw any caveat lodged by the Lessee over the Leased Premises;
  - (ii) discharge any mortgage or other registered encumbrance relating to any liability of the Lessee registered over the Leased Premises;
  - (iii) surrender any registered lease over the Leased Premises;
  - (iv) execute a withdrawal of caveat in a form approved or any other document that may be required to remove any encumbrance on the certificate of title for the Leased Premises, and to execute a deed or surrender of lease in the form approved or any other document that may be required in order to remove any lease or notification of it as an encumbrance on the Certificate of Title for the Leased Premises;
  - (v) if requested by the Lessor, do all things necessary to assist in the cancellation of any qualified title for the Leased Premises.
- (b) The Lessee hereby indemnifies, and shall keep indemnified, the Lessor against all loss or damage suffered by the Lessor as a result of the Lessee's failure to comply with section 28.2(a) on or before termination of the Lease.

**29. Termination for Community Benefit**

- 29.1 The Lessor will reserve the right to terminate the lease if it is decided by the Council that an alternate use of the land may deliver exceptional significant community benefit without the loss of services to the community.

The Council will make every effort to meet the current needs of the lessee through conducting consultation and negotiation to minimise any disadvantage to the lessee and the community.

- 29.2 Nothing in this clause 29 shall derogate from the Lessee's liability, up until the date of termination specified in the Termination Notice, for payment of the Rent and all other payments due under this Lease as well as the performance or observance of the terms of the Lease on the Lessee's part to be performed up to that date.

- 29.3 The Lessee's Obligations will survive the termination of the Term until they have been fulfilled.
- 29.4 Without derogating from the Lessee's Rights in the case of misrepresentation or fraud by the Lessor or any of the Lessor's officers, employees, agents or contractors, the Lessor will not be liable in any way for loss or injury (including economic loss or loss of profit) sustained by the Tenant or arising from anything referred to in this clause 29. In particular the exercise by the Landlord of the rights conferred on it by this clause 29 will not constitute a breach of the Lessor's covenant for quiet enjoyment.
- 29.5 The Lessee shall deliver up the Premises to the Lessor at the expiration of the Termination Notice in accordance the provisions of this Lease.

### **30. Miscellaneous**

#### 30.1 Lessee not to permit prohibited matters

If under this Lease the Lessee is required to do or is prohibited from doing any act, matter or thing the Lessee must also ensure that the Authorised Persons comply with that requirement or prohibition.

#### 30.2 Cost of Complying with Obligations

Unless otherwise stated in this Lease, the Lessee must pay the cost of performing or complying with every obligation of the Lessee under this Lease.

#### 30.3 Schedules

The Schedules shall form part of this Lease.

#### 30.4 Lessor's consent

The Lessor may give a conditional or unconditional consent or approval at its absolute discretion to any matter in this Lease without giving any reasons for refusal of consent or approval.

#### 30.5 Proper Law and Jurisdiction

This Lease is governed by the law in force in the State, or where applicable, the Commonwealth of Australia, and the parties consent to the jurisdiction of the courts of the State.

#### 30.6 Time for payment

Any amount payable by the Lessee to the Lessor unless otherwise specified must be paid to the Lessor within seven (7) Business Days after the Lessor gives a notice to the Lessee requiring payment.

#### 30.7 Time of the essence

Time shall be of the essence in all respects.

#### 30.8 Certificates

A certificate signed by the Lessor or the Lessor's solicitors about a matter or a sum payable is sufficient evidence of the matter or sum stated in the certificate unless the matter or sum is proved to be false.

### 30.9 Exercise of rights by Lessor

The Lessor may exercise each right, power or remedy at its discretion, separately or concurrently with any other right, power or remedy, and:

- (a) a single or partial exercise of a right, power or remedy does not prevent a further exercise of that right, power or remedy;
- (b) a failure to exercise or any delay in the exercise of a right, power or remedy does not prevent its exercise;
- (c) the rights, powers and remedies of the Lessor are cumulative with and not exclusive of the rights, powers and remedies provided by law; and
- (d) any demand made shall not in any way be deemed to constitute a waiver by the Lessor of any breach or non-observance of a Lessee's Obligation and shall not prejudice any other right of the Lessor in relation to such breach.

### 30.10 Lessor may act by agent

All acts and things which may be done by the Lessor may be done by a solicitor, agent, employee or contractor of the Lessor, including, without limitation, the Managing Agent.

### 30.11 Variation

This Lease may not be varied except in writing signed by all of the Parties.

### 30.12 Giving of notice

Any notice, approval, consent or other communication given under this Lease:

- (a) shall be in writing and in English;
- (b) may be served on the recipient:
  - (i) personally; or
  - (ii) by leaving it at, or sending by pre-paid post to:
    - A. the recipient's last known personal address or place of business, in any case;
    - B. the Leased Premises, in the case of the Lessee; or
    - C. the registered office or principal place of business, in the case of a corporation;
  - (iii) by facsimile transmission sent to the recipient's facsimile number (if known);
- (c) will be deemed to be served:
  - (i) if served personally, at the time of handing the notice to the recipient;
  - (ii) if left at the recipient's last known address, last known place

of business, the Leased Premises, a registered office or principal place of business, then at the time of leaving the notice;

(iii) if sent by pre-paid post, on the second Business Day after the date of posting;

(iv) if sent by facsimile transmission, on the same date as transmitted (if transmitted prior to 4:00pm on a Business Day) or the next Business Day (if transmitted at or after 4:00pm on a Business Day, or on a day not being a Business Day);

(d) if given by the Lessor, may be signed by the Lessor or a solicitor or agent of the Lessor;

(e) where persons having the same interest in respect of the subject matter of the Lease are to notify any other party or are to be notified, notification to or by anyone of them is sufficient notification to or by all of them.

#### 30.13 No moratorium

The provisions of any Law which extends a date for paying money under this Lease or which abrogates, nullifies, postpones or otherwise affects any provision in this Lease shall not apply to limit the terms of this Lease.

#### 30.14 Further assurances

Each Party shall execute and do all acts and things necessary to give full force and effect to this Lease.

#### 30.15 Effect of execution

This Lease binds each person who executes it notwithstanding the failure by any other person to execute this Lease.

#### 30.16 Severance

If any part of this Lease is or becomes unenforceable or void or voidable, that part will be severed from this Lease and those parts that are unaffected shall continue to have full force and effect.

#### 30.17 Goods and services tax

(a) In the Lease:

“GST” means goods and services tax or similar value added tax levied or imposed in Australia pursuant to the GST Law or otherwise on a supply;

“GST Act” means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*;

“GST Law” has the same meanings as in the GST Act;

“Tax Invoice” includes any document or record treated by the Commissioner of Taxation as a tax invoice or as a document entitling a recipient to an input tax credit.

- (b) Words used in this clause which have a defined meaning in the GST Law have the same meanings as in the GST Law unless the context indicates otherwise.
- (c) The Rent and other moneys payable under this Lease have been calculated without regard to GST, and the Lessor and the Lessee agree that the Lessor shall be entitled to charge an additional amount if the Lessor becomes subject to GST as a result of the grant of this Lease or any supply to the Lessee under or in connection with this Lease, and the following provisions shall apply:
  - (i) the Lessee must do everything reasonably requested by the Lessor to ensure this Lease is treated as taxable for the purposes of the GST, the Lessee must pay the GST to the Lessor at the same time as the payment to which the GST relates, and the Rent and other amounts payable under this Lease are exclusive of GST.
  - (ii) the Lessee must pay to the Lessor on demand any GST charged on goods and services acquired or payable or paid by the Lessor in connection with this Lease or the Leased Premises, including but not limited to any GST payable in connection with or in respect of the provision of any Services and the Rent;

### 30.18 Entire Agreement

This Lease constitutes the entire agreement between the Parties and contains all the representations, warranties, covenants and agreements of the Parties in relation to the subject matter of this Lease. This Lease supersedes all previous correspondence or documentation relating to the Lessee's leasehold interest in the Leased Premises.

### 30.19 Headings

Except in the Schedules, the headings used in this Lease are for reference only and shall not affect the interpretation of this Lease.

### 30.20 Termination

The Termination of this Lease does not affect the Lessee's obligation to pay any money or do any act which is payable or which is to be done after Termination as provided by this Lease.

## **31. PPSA**

### 31.1 Interpretation

For the purposes of this clause:

- (a) "the Lessor's Personal Property" means all personal property the subject of a security interest granted to or held by the Lessor under the Lease; and
- (b) words and phrases used which have a defined meaning in the PPS Law have the same meaning as in the PPS Law unless the context otherwise indicates.



### 31.2 Further assurance

If the Lessor determines that the Lease (or a transaction in connection with it) is or contains a security interest for the purposes of the PPS Law, the Lessee agrees to do anything (including without limitation obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the Lessor asks and considers necessary for the purposes of:

- (a) ensuring that the security interest is enforceable, perfected and otherwise effective; and/or
- (b) enabling the Lessor to apply for any registration, complete any financing statement or give any notification in connection with the security interest so that the Lessor has the priority required by it; and/or
- (c) enabling the Lessor to exercise rights in connection with the security interest.

### 31.3 No requirement for PPSA notices

The Lessor need not give any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA to be given and cannot be excluded.

### 31.4 Priority of the Lessor's interest

Nothing in the Lease shall be taken or construed as an agreement or consent by the Lessor to:

- (a) subordinate the Lessor's interest in the Lessor's Personal Property (or any part thereof) to any other encumbrance or interest affecting the Lessor's Personal Property at any time; or
- (b) delay the time when a security interest created or provided for under the Lease attaches to the relevant collateral.

### 31.5 Enforcement

To the extent that Chapter 4 of the PPS Act would otherwise apply to an enforcement by the Lessor of any security interest in the Lessor's Personal Property, the Lessee and the Lessor agree that the following provisions of the PPSA do not apply, to the extent the PPSA allows them to be excluded:

- (a) (enforcement methods) sections 118 (Enforcing security interests in accordance with land law decisions), 125 (Obligation to dispose of or retain collateral), 129(2) and (3) (Disposal by purchase), 134(2) (Proposal of secured party to retain collateral), 136(3) and 136(4) (Retaining collateral free of interests), 137 (Persons entitled to notice may object to proposal) and 138B(4) (Seizure and disposal or retention of crops);

- (b) (notices) sections 95 (Secured party must give notice of removal of accession), 121(4) (Enforcement of security interests in liquid assets – notice to higher priority parties and grantor), 127 (Seizure by higher priority parties – notice), 130 (Notice and disposal of collateral), 132 (Secured party to give statement of account), and 135 (Notice of retention of collateral) and 136(5) (Retaining collateral free of interests); and
- (c) (rights to remedy) sections 142 (Entitled persons may redeem collateral) and 143 (Entitled persons may reinstate security agreement).

### 31.6 Negative undertakings

The Lessee must not:

- (a) create any security interest or lien over any of the Lessor's Personal Property whatsoever (other than security interests granted in favour of the Lessor under the Lease);
- (b) sell, lease or dispose of its interest in or control (as such term is defined in the PPSA) or use of any of the Lessor's Personal Property;
- (c) give possession of the Lessor's Personal Property to another person other than the Lessor or where the Lessor expressly authorises it to do so;
- (d) permit any of the Lessor's Personal Property to become an accession to or commingled with any asset;
- (e) change its name without first notifying the Lessor of the new name not less than 21 days before the change takes effect;
- (f) relocate its principal place of business outside Australia or change its place of registration or incorporation;
- (g) move any of the Lessor's Personal Property outside Australia; or
- (h) allow any other person to acquire control of any personal property forming part of the Lessor's Personal Property at any time.

### 31.7 The Lessor's interest remains unaffected

The Lessor's interest in the Lessor's Personal Property is not affected by anything which, but for this provision, might have that effect including any failure to perfect or to continuously perfect the security interest in relation to any personal property forming part of the Lessor's Personal Property at any time.

### 31.8 Notices to the Lessor

Without limiting clause 31, the Lessee must notify the Lessor as soon as the Lessee becomes aware of any of the following:

- (a) if any personal property which does not form part of the Lessor's Personal Property becomes an accession to the Lessor's Personal Property and is subject to a security interest in favour of a third party that has attached at the time it becomes an accession;

- (b) if any of the Lessor's Personal Property is transported, located or situated outside Australia; and
- (c) upon request by the Lessor, of the present location or situation of any of the Lessor's Personal Property.

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## SCHEDULE 1

### **Item 1**     **Authorised Use**

Authorised Use: Recreation and Golf Club and associated activities  
Reserve Purpose: Recreation (Golf Course)

### **Item 2**     **Commencement Date**

1 July 2017

### **Item 3**     **End Date**

30 June 2038

### **Item 4**     **Land and Leased Premises**

#### **(a) Land**

Lot 312 on Deposited Plan 210825 and Lot 734 on Deposited Plan 217489  
Part Reserve 29167

#### **(b) Leased Premises**

The Land, together with all Buildings and improvements on the Land, as depicted on the plan in Attachment A to this Lease

### **Item 5**     **Interest Rate**

As adopted through the Shire of Wyndham East Kimberley Adopted budget, to a maximum of Eleven per cent (11%) per annum

### **Item 6**     **Rent**

The Rent is five hundred dollars (\$500.00) per annum plus GST

The Lessee will be invoiced for the lease rental from 1 July annually; where leases are commenced other than 1 July the lease rental will be invoiced for the proportion of the year to 1 July, to align future lease payments to 1 July.

### **Item 7**     **Rent Review Dates**

The Rent review period for community leases will be every three (3) years, unless otherwise determined by Council.

1 July 2020

1 July 2023

1 July 2026

1 July 2029

1 July 2032

1 July 2035

### **Item 8**     **Term**

The term shall be twenty one (21) years commencing on the Commencement Date and ending on the End Date.

### **Item 9**     **Further Terms**

Not applicable

### **Item 10**    **Lessee's Insurance Obligations**

Without affecting any further insurance to be effected by the Lessee as specified by the Lessor in writing to the Lessee, the Lessee shall effect policies of insurance in respect of:

- (a) public liability insurance for an amount not less than twenty million dollars (\$20,000,000.00) for any one incident or such greater amount as may be specified from time to time by the Lessor;
- (b) the full insurable value on a replacement or reinstatement basis of the Lessee's Building and Fixtures against fire, explosion, earthquake, aircraft, riot, civil commotion, flood, lightning, storm, tempest, smoke, rainwater, water leakage, impact by vehicles, machinery breakdown or malfunction, and malicious acts or omissions;
- (c) employers' indemnity insurance including workers' compensation insurance in respect of all employees of the Lessee employed in or about the Leased Premises;
- (d) the full insurable value on a replacement or reinstatement basis of all plate glass windows and doors forming part of the Leased Premises; and
- (e) any other matter or thing which the Lessor and the Commission reasonably requires by notice to the Lessee, on the terms specified in clause 13 of the Lease.

**Item 11**    **Lessor's Fixtures**

Nil

**Item 12**    **Lessor's Chattels**

Not Applicable

**Item 13**    **Lessee's Buildings and Fixtures**

TBA

## SCHEDULE 2

### Special Clauses

#### 1. Interpretation

- (a) These are the special clauses referred to in clause 26 of the Lease.
- (b) All words and expressions used but not defined in these special clauses but which are defined in clause 1 of the Lease, shall have the same meanings respectively assigned to them in clause 1 of the Lease.

#### 2. Approvals

Should the Lessee wish to undertake any Lessee's Works, the Lessee must obtain all necessary Approvals to undertake the Lessee's Works from all Relevant Authorities, including the prior consent of the Lessor.

#### 3. Lessee's Works

##### 3.1 Lessee's Development Covenants

The Lessee must:

- (a) carry out and execute the Lessee's Works in accordance with the Works Conditions; and
- (b) not make any alterations to the Plans or Specifications or include, construct or erect any works on the Leased Premises which have not been previously approved in writing by the Lessor without:
  - (i) the prior written consent of the Lessor which consent may be granted or refused or granted subject to conditions at the absolute discretion of the Lessor EXCEPT THAT the Lessor shall not arbitrarily or unreasonably withhold its approval in the case of any mandatory alterations required by a Relevant Authority; and
  - (ii) the prior written approval of the Lessor to a foreshore/rehabilitation management plan
  - (iii) if applicable, the prior approval of any Relevant Authority.
  - (iv) ensuring that any development on the Leased Premises is aligned with the clubs key club activities and recreational facilities.

##### 3.2 Access to the Leased Premises

- (a) The Lessee is entitled to take possession of the Leased Premises and to enter upon the Leased Premises and commence the Lessee's Works from and including the Commencement Date PROVIDED:
  - (i) the Lease has been executed by the Lessee and the Lessor and all other consenting parties; and
  - (ii) the Conditions Precedents have been satisfied.
- (b) For the avoidance of doubt, the Lessee is obliged to pay full Rent,

outgoings and all other money payable under the Lease from the Commencement Date regardless of whether the Lessee has commenced or completed the Lessee's Works or whether the Lessee can operate the Authorised Use from the Leased Premises.

- (c) Notwithstanding clause 3.2(a) of this Schedule, should the Lessee commence the Lessee's Works prior to the satisfaction of any Conditions Precedent, whether with or without the Lessor's prior consent, the Lessee does so at its own risk and shall have no claim against the Lessor in the event that any of the Conditions Precedent are thereafter not satisfied.

### 3.3 Facilities for Lessee's Contractors

The Lessee and the Lessee's contractors must provide and, as necessary, negotiate with the Lessor for all temporary services (including, without limitation, electricity, water and telephone services), toilet facilities, hoisting facilities, lunch rooms and other amenities, and the carting away of rubbish which the Lessee or its contractors may require, and must pay to the Lessor on demand any expenses which the Lessor may thereby incur.

### 3.4 Lessee Responsible for Damage

The Lessee shall, at the option of the Lessor, either repair and make good any damage which may be caused to the Leased Premises or any part thereof as a result of the construction, erection or installation of the Lessee's Works, to the satisfaction of the Lessor or alternatively, shall reimburse on demand the Lessor for all the costs incurred by the Lessor in having such damage made good by the Lessor's own contractors.

### 3.5 Lessee's Insurance

- (a) Prior to the commencement of the Lessee's Works (or any associated or incidental works on the Leased Premises), the Lessee must have:
  - (i) procured the insurance policies referred to in item 10 of Schedule 1; and
  - (ii) otherwise complied with the terms of clause 13 of the Lease in respect of those insurance policies.
- (b) For the avoidance of doubt and notwithstanding or limiting clause 13 or item 10 of Schedule 1 of the Lease, the Lessee must, prior to the commencement of any Lessee's Works or associated or incidental works on the Leased Premises:
  - (i) insure against and ensure that all of its contractors engaged in carrying out the Lessee's Works, throughout the Lessee's Works Period insure against any liability, loss, claim or proceeding whatsoever arising by virtue of any Laws relating to workers' compensation or employer's liability, by any person employed in or about the execution of the Lessee's Works and shall also insure for the Lessee's and its contractors' common law liability to all such persons for such amount as shall be nominated by the Lessor; and
  - (ii) ensure that the insurance policy referred to in item 10(b) of Schedule 1 insures the Lessee's Works for their full

reinstatement and replacement value and apply all insurance moneys received in reinstating, rebuilding and repairing any damage incurred or suffered to the Lessee's Works.

### 3.6 Assumption of Risk by Lessee

The Parties expressly acknowledge and agree that:

- (a) the construction of all of Lessee's Works (whether undertaken by the Lessee or the Lessor or any contractor on behalf of or at the direction of either the Lessee or the Lessor) shall be at the risk of the Lessee in all respects;
- (b) the Lessee bears the risk of:
  - (i) the Lessee's Works;
  - (ii) all Works Equipment; and
  - (iii) all unfixed goods and materials used or to be used in carrying out the Lessee's Works, including anything provided by the Lessor to the Lessee or brought onto the Leased Premises by any contractor; and
- (c) the Lessee releases and discharges the Lessor from all claims for loss of or damage to the Leased Premises, and any plant, equipment, Building, fixtures, fittings, merchandise, good or property of the Lessee contained in or about the Leased Premises for the purpose of the Lessee's Works and from any loss of profits resulting from such loss or damage.

### 3.7 Property in Works

Despite any rule of law or equity to the contrary, title to and ownership of the Lessee's Works shall be the property of the Lessee regardless of their attachment or affixation to the Leased Premises, and shall be a Lessee's Building and Fixtures unless re-classified as a Lessor's Fixture in accordance with this Lease.

### 3.8 Default

- (a) For the avoidance of doubt, a failure by the Lessee to perform or comply with any of its obligations under this clause 3 is an Event of Default and a breach of an essential term of the Lease ("Development Default").
- (b) Without prejudice to any other rights or remedies available to the Lessor, if the Lessor terminates this Lease pursuant to clause 19 on the occurrence of a Development Default:
  - (i) the Lessee shall, unless otherwise directed by the Lessor, within sixty (60) days from the date upon which the Lessor terminates the Lease remove from the Leased Premises the Lessee's Works in compliance with the Works Conditions and make good the Leased Premises to the satisfaction of the Lessor;
  - (ii) the termination of the Lease shall be without prejudice to the obligations of the Lessee to pay the Lessor any moneys which shall be due and owing as at the date on which the Lessor



terminates the Lease; and

- (iii) the Lessee shall pay to the Lessor on demand all costs and expenses incurred by the Lessor as a consequence of the Lessee's Development Default and in the exercise of the rights of the Lessor under this clause 3.8.
- (c) Should the Lessee not comply with its obligation under clause 3.8(b)(i) above the Lessor shall be at liberty to exercise any of the rights conferred on the Lessor pursuant to clause 21.5 of the Lease.
- (d) Until the Leased Premises are restored in accordance with the Lease (whether by the Lessee or the Lessor) or until the Lessor elects to take the absolute property in the Lessee's property (which includes the Lessee's Building and Fixtures) left after termination, the Lessee shall continue to pay the Rent, outgoings and all other payments pursuant to this Lease as if the Lessee were holding over in the Leased Premises.

### 3.9 Indemnity

Without limiting the generality of clause 14 of the Lease, the Lessee indemnifies the Lessor and the Lessor's employees against all claims, demands, loss, damage, costs and expenses of every description which the Lessor may suffer or incur in connection with or arising directly or indirectly from the Lessee's entry upon and occupation of the Leased Premises for the purpose of the Lessee's Works or the construction, installation or carrying out the Lessee's Works (whether undertaken by the Lessee or the Lessor or any contractor on behalf of or at the direction of either the Lessee or the Lessor).

### 3.10 Definitions

For the purpose of this clause 3:

- (a) "Lessee's Works Period" means the period from which the Lessee's Works commence until to the date that all Lessee's Works have been completed; and
- (b) "Works Equipment" means those things used, or work undertaken by the Lessee or its contractors to construct the Lessee's Works but which will not form part of the Lessee's Works.

## **4. Hire of Leased Premises to third parties**

- 4.1 The Lessee may hire out the Leased Premises or any part thereof on a casual basis only, provided:
  - (a) such use is consistent at all times with the Authorised Use;
  - (b) the Lessee ensures any hirer complies strictly with the relevant terms of this Lease;
  - (c) the Lessee registers the Leased Premises as a "Public Building" with the Relevant Authority within five (5) Business Days of executing this Lease;
  - (d) the Lessee observes, performs and complies with all relevant legislation; and

- (e) compiles regular risk management plans in accordance with Australian Standards.
- 4.2 For the purposes of this Lease, “casual hire” means any hire of the Leased Premises by the Lessee to a third party for a period of and not more than 48 hours in any calendar month and does not include any formal transfer, assignment or sublease of the Leased Premises.
- 4.3 The Lessee acknowledges and agrees that at all times, including when the Leased Premises are hired to a third party, it remains responsible for the Leased Premises, including without limitation any damages that may be caused or occurs during any hire period.

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## SCHEDULE THREE

### Foreshore and Access Licence

#### 1. **Definitions**

(a) In this Schedule:

**Authorised Person** has the same meaning in this Schedule as it has in the balance of the Lease;

**Foreshore Area** means the area of land as depicted and cross-hatched on the plan attached as Annexure A being Lot 3002 on Deposited Plan 46759 and being part Reserve 41812.

**Access Areas** means the designated access areas as depicted on the plan attached as Annexure A being Lot 692 on Deposited Plan 188509, part Reserve 29167, and part Lot 843 on Deposited Plan 220974, part Reserve 46172, including existing access roads and parking areas.

**Licence** means the Foreshore and Access Licence created under this Schedule.

#### 2. **Operative Part**

(a) In consideration of the Lessee entering into the Lease and observing the Lessee's Covenants, the Lessor grants the Lessee a non-exclusive right to use the Foreshore Area and Access.

(b) The Lessee must at all reasonable times allow general public access to the Leased Premises, Foreshore Area and Access areas and accordingly may not permit any development or install any fence, gate or barricade within or around the Foreshore Area or Access areas.

(c) This Licence continues for so long as the Lessee remains the Lessee under the Lease.

(d) This Licence does not confer upon the Lessee any estate or proprietary interest in any part of the Foreshore Area or Access Areas.

(e) The legal possession and control of the Foreshore Area and Access Areas remains vested in the Lessor, and in relation to part Reserve 46172, jointly with the Water Corporation.

#### 3. **Incorporation of Lease Clauses**

The following clauses and/or schedules contained in the Lease shall be incorporated into this Licence as if they were set out herein in full except that any reference to Leased Premises shall mean and be a reference to the Foreshore Area.

- (a) Clause 3      Reservation of Lessor's rights
- (b) Clause 8      Use of Leased Premises and Facilities
- (c) Clause 10     Maintenance in Works
- (d) Clause 11     Positive Covenants
- (e) Clause 12     Negative Covenants

- (f) Clause 13 Lessee's Obligation to effect insurances
- (g) Clause 14 Indemnities
- (h) Clause 16 Damage, Destruction or Resumption
- (i) Clause 17 Limit of Lessor's liability
- (j) Clause 21 Termination
- (k) Clause 27 Environmental Matters
- (l) Clause 30 Miscellaneous
- (m) Schedule 2 Special Clauses

**4. Termination**

- (a) This Licence terminates when the Lease terminates unless this Licence terminates earlier under clause 4 (b).
- (b) The Lessor is entitled to immediately terminate this Licence by notice to the Lessee if:
  - (i) the Lessee ceases to be the Lessee under the Lease;
  - (ii) the Lessee vacates the Leased Premises it occupies under the Lease;  
or
  - (iii) the Lessee fails to observe the Lessee's Covenants or fails to comply in any other way with this Licence.

**5. No Assignment**

The Lessee must not assign, mortgage or charge the Lessee's rights under this Licence nor sub licence, part with possession or dispose of its rights in any way unless it is in conjunction with the assignment or subletting of the Leased Premises leased by the Lease.

**SIGNING PAGE**

Executed by the parties as a deed

The COMMON SEAL of the **SHIRE OF WYNDHAM EAST KIMBERLEY** was  
affixed by the authority of a resolution  
of the Council in the presence of: ]  
] ] ] ]

\_\_\_\_\_  
Shire President

Print Full Name

\_\_\_\_\_  
Chief Executive Officer

Print Full Name

The COMMON SEAL of the **LAKE KUNUNURRA GOLF CLUB** was  
affixed by virtue of a resolution  
of the Committee in the presence of: ]  
] ] ] ]

\_\_\_\_\_  
Signature of President

President (Print Full Name)

\_\_\_\_\_  
Signature of Secretary

Secretary (Print Full Name)

**CONSENT**

**THE MINISTER FOR LANDS** hereby consents to the within Lease pursuant to section 18 of the *Land Administration Act 1997* (WA).

Dated this

day of

2017

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